JACOB KORNHAUSER
2011 Magnolia Tree Lane, Durham, NC 27703
jacob.kornhauser@duke.edu | (815) 322-3914

EDUCATION

Duke University School of Law, Durham, NC
Juris Doctor expected, May 2024
GPA: **3.79**
Honors: *William R. Patterson Scholar*
Dean's Award (Evidence)
Activities: Research Editor, *Duke Law Journal*
Duke Wrongful Convictions Clinic

University of Missouri-Columbia, Columbia, MO
Bachelor of Arts in Broadcast Journalism, *magna cum laude*, May 2017
GPA: **3.79**
Honors: University of Missouri Honors College
Activities: Mentor with Big Brothers, Big Sisters
Volunteer Youth Sports Coach

PERSONAL INTERESTS

Baseball

Writing Non-Fiction

Hiking

Videography & Photography

Survivor (TV Show)

EXPERIENCE

Paul Hastings, Washington, D.C.
Summer Associate, May 2023 – August 2023

Professor Samuel Buell, Durham, NC
Research Assistant, May 2022 – Present
- Research and edit Prof. Buell's academic papers on individual white-collar prosecutions.

Professors Sarah Baker & Brandon Garrett, Durham, NC
Teaching Assistant, August 2022 – Present (Prof. Garrett Evidence in Fall 2023)
- Collaborate with professors, hold office hours, and grade student papers.

Duke Wrongful Convictions Clinic, Durham, NC
Clinic Associate, May 2022 – August 2022
- Wrote briefs, affidavits, and legal memos for supervising attorneys.
- Obtained $750,000 statutory award in a wrongful conviction compensation case of first impression.

FOX Sports, Los Angeles, CA
Associate Producer, May 2019 – August 2021
- Wrote and produced pieces for FOX Sports video franchises and top on-air talent.

KDRV-TV (ABC), Medford, OR
Reporter & Producer, May 2017 – March 2019
- Produced, anchored, and reported on live television, writing news copy on tight deadlines.

PUBLICATIONS

JACOB KORNHAUSER, THE CUP OF COFFEE CLUB: 11 PLAYERS AND THEIR BRUSH WITH BASEBALL HISTORY (Rowman & Littlefield 2020).

JACOB KORNHAUSER & DYLAN KORNHAUSER, MAX GORDON: LIFE, LOSS, & BASEBALL'S GREATEST COMEBACK (McFarland 2021).

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UNOFFICIAL TRANSCRIPT
DUKE UNIVERSITY SCHOOL OF LAW

2023 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Federal Habeas Corpus	Garrett, B.	4.1	2.00
State & Local Government	Miller, D.	4.0	3.00
Jury Decisionmaking	Bornstein, B.	4.0	2.00
Legal Ethics	Metzloff, T.	3.8	2.00
Administrative Law	Benjamin, S.	3.7	3.00
Corporate Diversity	Rosenblum, D.	*Credit Only*	1.00

2022 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Business Associations	Bloom Raskin, S.	4.2	4.00
Evidence	Garrett, B.	4.1	4.00
Criminal Procedure: Investigation	Grunwald, B.	3.5	3.00
Legal Writing: Craft & Style	Magat, J.	*Credit Only*	2.00
Cybercrime	Stansbury, S.	3.5	2.00

2022 SPRING TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Constitutional Law	Blocher, J.	4.0	4.50
Criminal Law	Beale, S.	4.0	4.50
Legal Analysis, Research, Writing	Baker, S.	4.0	4.00
Property	Wiener, J.	3.7	4.00

2021 FALL TERM

COURSE TITLE	PROFESSOR	GRADE	CREDITS
Civil Procedure	Miller, D.	3.5	4.50
Contracts	Haagen, P.	3.5	4.50
Torts	Coleman, D.	3.2	4.50
Legal Analysis, Research, Writing	Baker, S.	*Credit Only*	0.00

TOTAL CREDITS: 58.50
CUMULATIVE GPA: **3.79**

University of Missouri – Columbia

Official Transcript

Date: 06/21/2020 Page: 1 of 2

Name: **Kornhauser,Jacob Alexander**
Student ID: 14178508
Date of Birth: 09/21/XXXX
Soc. Sec. Number: XXX-XX-5712

This transcript has been produced for:

JACOB ALEXANDER KORNHAUSER

Course Number	Course Title	Grade	Hours	Remarks
Degrees Awarded				
University of Missouri - Columbia				
Journalism-BJ		05-12-2017		
Radio-Television				
(Magna Cum Laude)				
CERT - General Honors		05-12-2017		
FALL 2013	**Exam Credit**			
Englsh 1000	Exposition & Argumentatn	CR	3.0	
Psych 1000	General Psychology	CR	3.0	
FALL 2013	**Univ of MO-Col** Ugrd			
Pre-Journalism,A&S				
Englsh 1310	Intro to American Lit	A	3.0	
Hist 1200	Surv Am History Snc 1865	A+	3.0	
Math 1100	College Algebra	A+	3.0	
Sociol 1000	Intro to Sociology	A+	3.0	
	GPA Hrs Att / Hrs Ern / Qual Pt / GPA			
UGRD Term:	12.0 / 12.0 / 48.00 / 4.000			
UGRD CUM:	12.0 / 18.0 / 48.00 / 4.000			
SPNG 2014	**Univ of MO-Col** Ugrd			
Pre-Journalism,A&S				
Atm Sc 1050	Introductory Meteorology	A-	3.0	
Journ 1010	Career Expl in Journ	S	1.0	
Journ 1100	Princs of Am Journ	A+	3.0	
Psych 3003H	Topics in Psych-Bhv Sci - Social Neuroscience	A	3.0	H
Stat 1200	Intro Statistical Reason	A	3.0	M
	GPA Hrs Att / Hrs Ern / Qual Pt / GPA			
UGRD Term:	12.0 / 13.0 / 47.10 / 3.925			
UGRD CUM:	24.0 / 31.0 / 95.10 / 3.963			

Course Number	Course Title	Grade	Hours	Remarks
FALL 2014	**Univ of MO-Col** Ugrd			
Pre-Journalism,A&S				
Econom 1051H	General Economics-Honors	B	5.0	H,M
Geol 1100	Prncp of Geol W/Lab	B+	4.0	
Journ 2100H	News	A-	3.0	H,W
Psych 2510	Survey Abnormal Psychol	A	3.0	
	GPA Hrs Att / Hrs Ern / Qual Pt / GPA			
UGRD Term:	15.0 / 15.0 / 51.30 / 3.420			
UGRD CUM:	39.0 / 46.0 / 146.40 / 3.754			
SPNG 2015	**Univ of MO-Col** Ugrd			
Journalism-BJ				
Film S 1800	Intro to Film Studies	A	3.0	
Journ 2000	Cross-Cultural Journlsm	A-	3.0	
Journ 2150	Multimedia Journalism	A-	3.0	
Pol Sc 1100	American Government	B+	3.0	
Psych 2110	Learning, Memory, & Cognition	A	3.0	
	GPA Hrs Att / Hrs Ern / Qual Pt / GPA			
UGRD Term:	15.0 / 15.0 / 56.10 / 3.740			
UGRD CUM:	54.0 / 61.0 / 202.50 / 3.750			
SUM 2015	**Univ of MO-Col** Ugrd			
Journalism-BJ				
Pol Sc 4150	The American Presidency	A	3.0	
Sociol 3600	Criminology	B	3.0	
	GPA Hrs Att / Hrs Ern / Qual Pt / GPA			
UGRD Term:	6.0 / 6.0 / 21.00 / 3.500			
UGRD CUM:	60.0 / 67.0 / 223.50 / 3.725			
FALL 2015	**Univ of MO-Col** Ugrd			
Journalism-BJ				
Hist 4000	Age of Jefferson	A	3.0	
Journ 3000	Hist of Am Journ	A-	3.0	
Journ 4000	Communications Law	A	3.0	
Journ 4300	Broadcast News 1	A-	3.0	
Psych 3870	Sleep & Sleep Disorders	A	3.0	
	GPA Hrs Att / Hrs Ern / Qual Pt / GPA			
UGRD Term:	15.0 / 15.0 / 58.20 / 3.880			
UGRD CUM:	75.0 / 82.0 / 281.70 / 3.756			
SPNG 2016	**Univ of MO-Col** Ugrd			
Journalism-BJ				
Cl Hum 3250	Greek and Roman Epic	A	3.0	
Journ 3510H	Think Global - Honors	A	3.0	H,W
Journ 4306	Broadcast News 2	A	3.0	
Psych 4540	Emot Disord Child/Adolsc	B-	3.0	
	GPA Hrs Att / Hrs Ern / Qual Pt / GPA			
UGRD Term:	12.0 / 12.0 / 44.10 / 3.675			
UGRD CUM:	87.0 / 94.0 / 325.80 / 3.745			

Brenda K. Selman

University Registrar

University of Missouri – Columbia

Official Transcript

Name: **Kornhauser,Jacob Alexander**
Student ID: 14178508
Date of Birth: 09/21/XXXX
Soc. Sec. Number: XXX-XX-5712

This transcript has been produced for:

JACOB ALEXANDER KORNHAUSER

Course Number	Course Title	Grade	Hours	Remarks

Course Number	Course Title	Grade	Hours	Remarks
SUM 2016	**Univ of MO-Col** Ugrd			
Journalism-BJ				
Journ 4940	Internship in Journalism	S	3.0	
Rel St 3350	Monsters in W Relg & Folklore	A+	3.0	
	GPA Hrs Att Hrs Ern Qual Pt GPA			
UGRD Term:	3.0 6.0 12.00 4.000			
UGRD CUM:	90.0 100.0 337.80 3.753			
FALL 2016	**Univ of MO-Col** Ugrd			
Journalism-BJ				
Ag_Ed_Ld 8250	Leadership Theory & Applicatn	A	3.0	
Journ 4308	Broadcast News 3	A	3.0	W
Journ 4814	Multimedia Sports	A+	3.0	
Psych 4815H	Cross-Cultural Psych - Cross Cultural Psychology	A-	3.0	H
	GPA Hrs Att Hrs Ern Qual Pt GPA			
UGRD Term:	12.0 12.0 47.10 3.925			
UGRD CUM:	102.0 112.0 384.90 3.774			
SPNG 2017	**Univ of MO-Col** Ugrd			
Journalism-BJ				
Journ 4310	News Producing	A	1.0	
Journ 4320	Adv Broadcast Reporting	A+	3.0	S
Journ 4422	Sports Journalism	A	3.0	
Journ 4974	Internet Appl F/Radio/TV	A	3.0	
Psych 2410H	Developmental Psych - Hnrs	A-	3.0	H
	GPA Hrs Att Hrs Ern Qual Pt GPA			
UGRD Term:	13.0 13.0 51.10 3.931			
UGRD CUM:	115.0 125.0 436.00 3.791			

Brenda K. Selman

University Registrar

University of Missouri-Columbia credit is expressed in semester hours.

Explanation of Remarks

E = Law Experiential Learning
C = Computer and Information Proficient
H = General Honors
M = A course including a substantial amount of mathematics reasoning
R = Repeated course, grade not figured in CUM GPA (eff. Fall 2000)
S = Service Learning
W = A course requiring 5000 words of writing and revision
* = An official change has been made to this record

Explanation of Grading System

A = Outstanding
B = Superior
C = Adequate
CR = Credit
D = Marginal
E = Exam
F = Unacceptable
H = Hearer or Auditor
HN = Honors - Medicine only, beginning Fall 1997
I = Incomplete
IP = In Progress
LC = Letter of Commendation - Medicine only, beginning Summer 1998
NR = Not Reported
PR = Preregistered
S = Satisfactory
S* = Satisfactory with Honors - Medicine only
T = Non UM system transfer course
U = Unsatisfactory
W = Withdrew Passing
WF = Withdrew Failing

The grade of D is not awarded to Graduate Students

Grade Point Values for Grading System

A = 4.00	D = 1.00
B = 3.00	F = 0.00
C = 2.00	WF = 0.00

Plus-Minus Grading Effective Fall 1995

A plus (+) sign following a letter grade adds an additional 0.33 grade points per credit hour. A minus (-) sign following a letter grade subtracts 0.33 per credit hour. Plus/Minus grade points apply to undergraduate students only.

Plus-Minus Grading Effective Fall 1998

A plus (+) sign following a letter grade adds an additional 0.3 grade points per credit hour, however no additional grade points are awarded for an A+. A minus (-) sign following a letter grade subtracts 0.3 per credit hour. Plus/Minus grade points apply to undergraduate students only.

Plus-Minus Grading Effective Fall 2011

Plus/Minus grade points apply to undergraduate and graduate students.

Law Numeric Grading System Effective Summer 2007

Important Note: Since 1987, the University of Missouri - Columbia has only used a numeric grading system. There are no definitive numeric grade to letter grade translations.

NOTE: To view the complete guide of transcript information go to http://www.transcripts.missouri.edu.

ADDRESS
University of Missouri-Columbia
Office of the University Registrar
125 Jesse Hall
Columbia MO 65211
573-882-4249

In April 2007, the School of Law converted from a 55-100 to a 65-100 grading scale. Grades are reflected on the 55-100 scale for Winter 2007 and all prior semesters. Grades are reflected on the 65-100 scale for Summer 2007 and all subsequent semesters. All cumulative GPAs were adjusted to the new scale by a one-time adjustment at the conclusion of the Winter 2007 semester.

NOTE: TO RECEIVE GRADUATE CREDIT IN ANY COURSE, THE STUDENT MUST HAVE BEEN ENROLLED IN GRADUATE SCHOOL OR AS A POST BACCALAUREATE SPECIAL. ALL COURSES TAKEN IN GRADUATE SCHOOL OR AS A POST BACCALAUREATE SPECIAL ARE GRADUATE LEVEL.

Course Numbering System Through Summer 2004

1 to 99	courses primarily for freshmen and sophomores
100 to 199	courses primarily for undergraduates: no graduate credit
200 to 299	courses for undergraduates, appropriate professional students, and for graduate students except those whose graduate major is in the department in which the course is offered.
300 to 399	courses for undergraduates, appropriate professional students, and for graduate students without restriction to major.
400 to 499	primarily for graduate students and appropriate professional students in special programs; undergraduates admitted only with the approval of the instructor of the course and the dean of the division in which the course is offered.
500 to 599	law, medicine or veterinary medicine courses

Course Numbering System Effective Fall 2004

0000 to 0999	skill development courses: courses that do not count towards degree requirement
1000 to 1999	freshman-level courses
2000 to 2999	sophomore-level courses
3000 to 3999	junior/senior level courses (upper division)
4000 to 4999	junior/senior level courses (upper division)
5000 to 6999	professional-level courses
7000 to 7999	beginning graduate courses
8000 to 8999	mid-level graduate courses
9000 to 9999	upper-level graduate courses

In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without written consent of the student.

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 19, 2023

The Honorable Denny Chin
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Re: Jacob Kornhauser

Dear Judge Chin:

It is my pleasure to write this letter recommending Jacob Kornhauser for a clerkship in your chambers. Jacob has done very well at Duke Law, earning grades that put him on track for high Latin honors at graduation. Perhaps even more importantly, he has honed his research and writing skills in a variety of ways—from working in broadcast journalism to serving as Research Editor of the *Duke Law Journal*. He will be a very, very strong clerk.

I was fortunate to have Jacob in my Constitutional Law course in the spring of 2022. Because the course covered a wide range of doctrinal rules in addition to interpretive theories and historical context, I had a chance to observe and learn a lot about the students' skills and interests.

Especially given the backdrop of transitioning back to in-person classes in the aftermath of the pandemic's height, I was especially attuned to student participation, and Jacob distinguished himself throughout the semester. He is not a "gunner"—he doesn't jump to volunteer an answer every single question asked—but essentially served as the class's safety valve. He was mostly likely to raise his hand when no one else would. In other words, he took on the hardest questions, and did it well. He also regularly visited office hours, which I personally enjoyed because it gave us a chance to talk in more depth about the doctrine and also just chat about sports and other areas of mutual interest. I remember at one point when we'd been discussing the Dormant Commerce Clause, Jacob noticed a news story about how Oregon's assisted suicide law required that a person be a resident of the state—a requirement that raises a host of interesting constitutional questions.

Unsurprisingly, Jacob aced my exam, earning a 4.0. Most of the exam was a standard "issue spotter" requiring students to identify the strongest legal claims and explain how they should be evaluated. Jacob excelled at this—which is saying a lot, because there were ten distinct issues to address! —but also at the essay, which required students to evaluate doctrinal design and development. Jacob chose to write about *Wickard v. Filburn* and the development of Commerce Clause doctrine, and turned in a masterful analysis.

Looking at his transcript now, I see that the 4.0 in my class was one of *three* he earned that semester, and that over the past three terms the *majority* of his grades have been 4.0 or better—including in demanding upper-level courses like Business Associations (4.2) and Evidence (4.1, which was the highest grade in that class). His overall GPA of 3.79 is very strong—in line with that of many other Duke students who've gone on to highly competitive federal clerkships—but actually undersells his accomplishments, since it is weighted down by his first semester, in which he earned an overall 3.4. That is still above Duke's required 3.3 median, but his GPA since then is closer to an extraordinary 3.9. At his current trajectory, he will likely graduate with high Latin honors; take away the first semester and he could well be right at the top of his class (though Duke Law does not officially rank its students).

I would especially emphasize Jacob's 4.0 in the legal research and writing course, given the centrality of those skills to a law clerk's job. Jacob takes justifiable pride in his legal writing, and is always looking to further improve it. He wrote two nonfiction books prior to law school, and worked at media companies like ESPN and Fox Sports, where he had to wade through mountains of information and make them digestible, often in high-pressure situations and under strict time constraints. Again, those professional skills make him especially well-equipped for clerking. In fact, I have personally benefitted from Jacob's editing and insight, since he is one of the editors working on an article I have forthcoming in the *Duke Law Journal*. His suggestions, both as to substance and style, have been fantastic.

Jacob has been a wonderful student at Duke, and I am confident that he will be a great law clerk as well. Please do not hesitate to contact me if you have any questions about him.

Sincerely,

Joseph Blocher
Lanty L. Smith '67 Professor of Law

Joseph Blocher - Blocher@law.duke.edu - (919) 613-7018

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 19, 2023

The Honorable Denny Chin
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Re: Jacob Kornhauser

Dear Judge Chin:

I write to recommend Jacob Kornhauser for a judicial clerkship in your chambers. He has an extremely strong record at Duke Law. The curve at Duke Law is extremely demanding, and the grading more fine-grained than at other top law schools. Jacob is warm, collegial, a superlative writer, who relishes complex areas of legal doctrine, and has a deep commitment to public interest work. He would be such a delight in chambers; I recommend Jacob in the strongest possible terms.

I first came to know Jacob in my evidence course in fall 2022. Jacob wrote one of the best exams in the course, and received an "A+"-level 4.1 grade in a very competitive class, a grade that I have only awarded a handful of times in all of my years at Duke Law School. Jacob won the Dean's award for his work in the class. I was not surprised at this performance. Jacob asked excellent questions throughout the course and was easily one of the most engaged students in a quite large course. Jacob was clearly very engaged with specialized issues regarding scientific evidence and legal ethics during the course. This spring, Jacob was enrolled in my federal habeas corpus course. Jacob consistently, again, asked some of the most challenging questions and was an active participant. It was a small class, of just nine students, engaged with some of the most difficult statutory and judicial doctrines, and I had a chance to get to know each of the students extremely well. My appreciation for Jacob's depth as a legal thinker and problem solver only grew, as I saw him relish the challenges of unpacking habeas corpus doctrines.

I have also read and offered comments on Jacob's draft student note examining the implications of the Supreme Court's ruling in Shinn v. Ramirez. It is an extremely complex area, even within federal habeas doctrine. The piece is excellent, makes a very useful contribution, and I trust that the law review will publish it when it is submitted. Returning the favor, Jacob was the assigned editor to a law review article that I have co-authored with Joseph Blocher and that Duke Law Journal is publishing. Jacob's suggested edits on that manuscript were some of the most helpful that we received, from any readers.

Jacob has done a range of other impressive research and public interest work at Duke Law, ranging widely from his work on Duke Law Journal, summer work at Paul Hastings, to work in the Wrongful Convictions Clinic. Jacob is a fine writer; he was a teaching assistant in the legal writing program, has even published two nonfiction books on sports, relating to his work in sports journalism before law school. This wide-ranging experience has added a level of maturity to Jacob's work.

In short, Jacob is an academically gifted student, a quick study, a very strong writer, and a very warm and personable communicator. Jacob is balanced, collegial, creative, hardworking, and would be a great asset in chambers. Please feel free to contact me at (919) 613-7090 if you would like to discuss his application, and I thank you for considering it.

Very truly yours,

Brandon L. Garrett
L. Neil Williams, Jr. Professor of Law and
Director, Wilson Center for Science and Justice

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 19, 2023

The Honorable Denny Chin
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Re: Jacob Kornhauser

Dear Judge Chin:

I am writing to offer my highest recommendation for Jacob Kornhauser to serve as one of your law clerks. Jacob was a student in my legal writing course last year, a class which at Duke spans the entirety of the first year. This year, I've had the pleasure of working with Jacob as one of my two teaching assistants for the course.

The group of first year students I taught last year is the most outstanding group I have ever taught at Duke, and Jacob was the one of two students from that group that I chose to hire as a TA. That speaks to his writing skills, but it also reflects his personality.

Jacob has an interesting professional background that distinguishes him from other students. Before law school, he was a sports reporter, even publishing two books, both focusing on baseball. My experience teaching has been that students who work in some fashion before law school make better students and TAs, and this would also make him an excellent clerk. He is mature, seasoned, and persistent—all things that would be beneficial in a judge's chambers.

As one of my TAs this year, Jacob has been instrumental in acting as a mentor and teaching my students the Bluebook. The students respond very well to him and I have been impressed with his judgment and patience in interactions with them. As you are surely aware, first year law students can be a high-strung, challenging group with which to interact.

Jacob has all the intellectual skills needed to be an outstanding clerk, but he would also be a wonderful, collegial addition to chambers. His recent election to the position of Research Editor on Duke's law review further reflects this, as his fellow classmates chose him for this position which requires sensitivity and great attention to detail.

Please let me know if I can provide any further information in support of Jacob's application. He is an outstanding student and strong clerkship candidate.

Sincerely yours,

Sarah C. W. Baker
Clinical Professor of Law

Sarah Baker - baker@law.duke.edu - 919-613-7039

Duke University School of Law
210 Science Drive
Durham, NC 27708

June 19, 2023

The Honorable Denny Chin
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Re: Jacob Kornhauser

Dear Judge Chin:

I write to recommend Jacob Kornhauser, who has applied for a clerkship in your chambers. I do so with high enthusiasm.

Although Jacob has not yet been a student in one of my courses at Duke Law, I know him well from his extensive research assistant work for me during the summer and fall of 2022. As a first-year student, Jacob came to me to seek out the position based on his interest in my field of research, which is corporate and white-collar crime and government enforcement. I ended up delighted and lucky to have hired him.

Jacob is an academic performer of the highest rank, with outstanding legal skills. His grades have been impressively high across a variety of core, demanding courses, especially as he has progressed over his first two years at Duke.

As a research assistant, Jacob has been uniformly mature, industrious, and self-directed in solving problems. His work for me primarily involved two major projects. First, for a paper examining individual prosecutions in substantial scandals in the financial markets between 2010 and 2020, Jacob collected comprehensive data on over 100 criminal and civil enforcement actions in the United States and United Kingdom. He then organized that data into a beautiful set of appendices and tables. Peer readers of the resulting paper have noted the quality and usefulness of the data and its presentation. For this project, Jacob also provided invaluable assistance in expanding, editing, and cite-checking hundreds of complicated footnotes. I could not have managed these important aspects of this project without Jacob's contributions.

Second, Jacob captained the editing and production of the second edition of my textbook, *Corporate Crime: An Introduction to the Law and its Enforcement*. This is a two-volume text covering dozens of topics in the field. I have chosen to self-publish it in bound form through Amazon's platform and make it available free for download on my website, buelloncorporatecrime.com. The process of revising the manuscript each year, producing the final book through Amazon's process, and revising the website is time-consuming and technically complex. I count on having a proficient and agile research assistant to carry the project to completion. Jacob was excellent in this role, and I am proud of the final product, which could not have been realized without his guiding hand.

I have been particularly impressed during these projects by Jacob's professionalism and dispatch in communicating clearly and frequently about his progress, his understanding of tasks, and his expectations about completion. At times, I have had to urge him to slow down and not feel that he is expected always to turn things around without delay. Jacob's diligence is beyond question.

Having spent ten years in the federal courts before teaching, as a law clerk and as a prosecutor in several districts and circuits, and having taught and mentored thousands of law students, I am confident in predicting that Jacob Kornhauser would be an excellent hire for any judge with a demanding docket and a chambers that values professionalism and collaboration. I am happy to assist you further in any way with your evaluation of his application.

Sincerely yours,

Samuel W. Buell
Bernard M. Fishman Professor of Law

Sam Buell - buell@law.duke.edu - 919-613-7193

STATEMENT OF THE ISSUE

28 U.S.C. § 1782(a) authorizes federal district courts to compel discovery for use in "foreign or international tribunal[s]." Petitioner seeks discovery under this statute for use in private commercial arbitration in London, which if granted, would provide greater discovery access than is permitted in identical U.S. proceedings. Does private commercial arbitration, therefore, fall outside the scope of a "foreign or international tribunal?"

STATEMENT OF THE CASE

Petitioner-Appellant Op Zee Verven ("Petitioner") seeks federal court discovery assistance not available to American private commercial arbitration parties for use in the London Court of International Arbitration ("LCIA"). ER-2. The LCIA is a private commercial arbitral body. ER-8. Donny Jepp purchased a Yacht-Sea! yacht in early 2020. ER-2. It was damaged months later when it took on water while moored at the Float Your Boat Marina. Id. Mr. Jepp sued Yacht-Sea! and obtained a $350,000 jury award. Id. Petitioner is the exclusive exterior paint supplier for Yacht-Sea! yachts, an English luxury yacht company, and is trying to avoid $350,000 in indemnification liability related to the Jepp jury award. Id.

Petitioner filed an Application for an Order to Take Discovery for use in a Foreign Proceeding in the U.S. District Court for the Central District of California to use in the LCIA indemnification arbitration. Id. They sought to depose witnesses, Respondent-Appellees ("Respondents") Omar Ayad, Jennifer Jones, and Yi-Chin Cho in relation to the Float Your Boat Marina incident. Id. Such applications are governed by 28 U.S.C. § 1782(a). The Commission on International Rules of Judicial Procedure ("Commission") jumpstarted the current law by promulgating suggestions for improvements in a limited set of areas: "international practice in civil, criminal, and administrative proceedings." Act of Sept. 2, 1958, Pub. L. 85-906, § 2, 72

Stat. 1743. The 1964 amendment to § 1782, which adopted the Commission's suggestions, confined discovery to use in "foreign or international tribunal[s]." 28 U.S.C. § 1782(a).

The district court found private commercial arbitration did not fit into the circumscribed framework of "foreign or international tribunal" under § 1782(a). ER-8. Accordingly, the court denied Petitioner's application. Id.

STANDARD OF REVIEW

Questions of statutory construction are reviewed de novo. U.S. v. Youssef, 547 F.3d 1090, 1093 (9th Cir. 2008) (citing U.S. v. Ray, 375 F.3d 980, 988 (9th Cir. 2004)).

ARGUMENT

THE COURT SHOULD AFFIRM THAT PRIVATE COMMERCIAL ARBITRATION IS NOT A "FOREIGN OR INTERNATIONAL TRIBUNAL" UNDER 28 U.S.C. § 1782(a).

The first step in statutory interpretation is determining whether the disputed language is ambiguous. Robinson v. Shell Oil Co., 519 U.S. 337, 340 (1997). The inquiry ends there if the language is unambiguous and remains consistent with the larger statutory scheme. Id. Terms are only ambiguous if they are "susceptible to more than one reasonable interpretation." Guido v. Mount Lemmon Fire Dist., 859 F.3d 1168, 1173 (9th Cir. 2017) (quoting Alaska Wilderness League v. EPA, 727 F.3d 934, 938 (9th Cir. 2013)). The disputed language itself, the specific context in which it is used, and the broader context of the entire statute help inform whether there is ambiguity. Shell, 519 U.S. at 341. Courts may only turn to extrinsic, non-dispositive evidence like legislative history to discern meaning if they find ambiguity. Yokeno v. Sekiguchi, 754 F.3d

649, 653–54 (9th Cir. 2014) (citing Dep't of Hous. and Urb. Dev. v. Rucker, 535 U.S. 125, 132–33 (2002)).

The subject of this litigation, 28 U.S.C. § 1782(a), outlines for which circumscribed set of foreign proceedings federal district courts may compel discovery:

> The district court of the district in which a person resides or is found may order him to give his testimony or statement or to produce a document or other thing for use in a proceeding in a foreign or international tribunal, including criminal investigations conducted before formal accusation.

28 U.S.C. § 1782(a). Whether this language permits federal district courts to compel discovery for use in private commercial arbitration is a case of first impression in this Court and is the subject of a nationwide circuit split.

For 40 years, federal appellate courts took a universally narrow approach, excluding private commercial arbitration. The Supreme Court decided Intel Corp. v. Advanced Micron Devices, Inc., 542 U.S. 241, in 2004 and announced so-called Intel factors, which guided discretionary considerations in § 1782(a) requests. Id. at 264. Intel merely provided courts with discretionary factors to use *after* determining they have the authority to grant § 1782(a) requests. See id. at 263–65 (announcing relevant discretionary factors for use after court deems "it has the authority" to grant the request in the first place).

A couple circuits took the decision as granting the authority itself, an entirely separate threshold matter. See Abdul Latif Jameel Transp. Co. v. FedEx Corp. (In re Application to Obtain Discovery), 939 F.3d 710, 732 (6th Cir. 2019); Servotronics, Inc. v. Boeing Co., 954 F.3d 209, 215 (4th Cir. 2020) (becoming first and only post-Intel circuits to hold private commercial arbitration is a "foreign or international tribunal").

The majority of federal appellate circuits still read "foreign or international tribunal" narrowly, excluding private commercial arbitration. See El Paso Corp. v. La Comision Ejecutiva

Hidroelectrica Del Rio Lempa, 341 F. App'x 31, 34 (5th Cir. 2009); Guo v. Deutsche Bank Sec. Inc. (In re Application & Petition of Guo), 965 F.3d 96, 108–09 (2d Cir. 2020); Servotronics, Inc. v. Rolls-Royce PLC, 975 F.3d 689, 696 (7th Cir. 2020) (acknowledging the Intel opinion and still holding that private commercial arbitration is not a "foreign or international tribunal" under § 1782(a)).

Here, canons of statutory construction confirm the circuit majority's conclusion: private commercial arbitration is not a "foreign or international tribunal" under § 1782(a). First, the ordinary meaning of "tribunal" implicates government-conferred authority. Second, statutory context informs a narrow reading that remains consistent within the statute and with other statutes. Third, including private commercial arbitration under § 1782(a) does not further its legislative purpose and is inconsistent with its legislative history. Fourth, including private commercial arbitration would lead to bizarre results the enacting legislature could not possibly have intended. This Court should therefore affirm the district court's decision and join the majority of circuits in holding that private commercial arbitration is not a "foreign or international tribunal" under § 1782(a).

A. The ordinary meaning of "tribunal" excludes private commercial arbitration under § 1782(a).

The ordinary meaning of "tribunal" excludes private commercial arbitration under § 1782(a). When a term is undefined by statute, this Court looks to its ordinary meaning. Tomczyk v. Garland, 25 F.4th 638, 644 (9th Cir. 2022) (citing BedRoc Ltd. v. U.S., 541 U.S. 176, 183 (2004)). To determine ordinary meaning, this Court considers contemporary dictionary definitions. Id. General-usage, lay dictionaries are used first. See California v. Trump, 963 F.3d 926, 944 (9th Cir. 2020) (turning first to Merriam-Webster to define "unforeseen" under Section 8005).

Here, the ordinary meaning of "tribunal" by lay and legal dictionary definitions implicates government-conferred authority, excluding private commercial arbitration under § 1782(a).

A tribunal is "[a]ny of various *local boards of officials* empowered to settle disputes esp. between individuals and a *government department*." *Tribunal,* 18 Oxford English Dictionary 505 (2d ed. 1989) (emphasis added). Petitioner relies on "something which directs a judgment or course of action." *Tribunal,* Webster's New International Dictionary 2707 (2d ed. 1959). This broad definition, however, lacks crucial legal specificity. A tribunal, more relevantly, is "[t]he whole body of judges who compose a jurisdiction; a judicial court; the jurisdiction which the judges exercise." *Tribunal,* Black's Law Dictionary (5th ed. 1979).

"Local boards of officials," "government department," and "jurisdiction" all carry with them connotations of government-conferred authority. They accordingly limit the scope of "tribunal" under § 1782(a) to adjudicative bodies with government-conferred rather than party-conferred authority. Private arbitral panels are not made up of local boards of officials, are not government departments, and do not "exercise" jurisdiction so much as it is conferred upon them by contractual agreement. For example, the LCIA "is not tied to any country's legal system or government."[1] It does not derive its authority from any government entity, but rather from the party agreement itself. On its own terms, LCIA is not tied to government entities in a manner consistent with the ordinary meaning of "tribunal."

The ordinary meaning of "tribunal" implicates government-conferred authority, so private commercial arbitration whose authority is party conferred is not a "foreign or international tribunal" under § 1782(a).

[1] *Frequently Asked Questions*, https://www.lcia.org/Frequently_Asked_Questions.aspx#2 (last visited Mar. 14, 2022).

B. Excluding private commercial arbitration as a "foreign or international tribunal" is consistent within the statute and with other statutes.

Excluding private commercial arbitration as a "foreign or international tribunal" is consistent within the statute and with other statutes. This Court searches for statutory meaning by looking at other provisions within the same statute or the language of similar statutes. Jonah R. v. Carmona, 446 F.3d 1000, 1006–07 (9th Cir. 2006). It must then make "every effort" to interpret provisions within the same statute consistently. United States v. Thomsen, 830 F.3d 1049, 1057 (9th Cir. 2016). It also interprets separate statutes consistently, imposing a heavy burden on one to show "clearly expressed congressional intention" for one statute to displace another. Epic Sys. Corp. v. Lewis, 138 S.Ct. 1612, 1624 (2018) (quoting Vimar Seguros y Reaseguros, S.A. v. M/V Sky Reefer, 515 U.S. 528, 533 (1995)).

Here, excluding private commercial arbitration from the scope of a "foreign or international tribunal" is supported within the language of the statute itself and is consistent with other relevant statutes. First, § 1782(a)'s inclusion of "criminal proceedings" restricts the scope of "tribunal." Second, § 1781, which is intertwined with § 1782, implicates government-conferred authority. Third, construing "tribunal" narrowly avoids a clash with vitally important domestic legislation. Statutory context, therefore, further provides for a narrow construction of "tribunal," which excludes private commercial arbitration.

i. "Criminal investigations" restricts the scope of "foreign or international tribunal" to government-conferred authority.

"Criminal investigations" restricts the scope of "foreign or international tribunal" to bodies with government-conferred authority. To give disputed terms their meaning, this Court construes the text in the "specific context in which the language is used[.]" U.S. v. Tan, 16 F.4th 1346, 1349

(9th Cir. 2021) (quoting J.B. v. U.S., 916 F.3d 1161, 1168 (9th Cir. 2019)). It must then ensure provisions within the same statute are construed consistently. Thomsen, 830 F.3d at 1057.

Here, the relevant provision's use of "including criminal investigations" necessarily implicates government-conferred authority, requiring a consistently narrow reading of "foreign or international tribunal."

Proceedings covered by § 1782(a) are those "in a foreign or international tribunal, including criminal investigations conducted before formal accusation." 28 U.S.C. § 1782(a). The inclusion of "criminal investigations" in the same sentence as the disputed statutory language requires "criminal investigations" and "foreign or international tribunal" to be construed consistently. Criminal matters are, of course, not decided by private arbitral panels, but by judicial courts with government-conferred authority. Therefore, if it is to be construed consistently with the rest of the sentence, "foreign or international tribunal" can only encompass adjudicative bodies drawing their authority from a government entity. Private commercial arbitration, including the LCIA, draws its authority from party agreement, not a government entity.

Construing "foreign or international tribunal[s]" under § 1782(a) to exclude private commercial arbitration would heed the context Congress provided by including "criminal investigations" in the same sentence.

ii. Section 1781's exclusion of U.S. private commercial arbitration as a "tribunal" necessitates a similarly narrow construction under § 1782.

Section 1781's exclusion of U.S. private commercial arbitration as a "tribunal" necessitates a similarly narrow construction under § 1782. To help its interpretation of disputed terms, this Court looks to similar provisions within the statute as a whole. Carmona, 446 F.3d at 1006–07.

Here, § 1781 necessarily excludes American private commercial arbitration as a "tribunal," requiring a narrow construction of the term under § 1782 to avoid statutory inconsistency.

Section 1781(a)(2) reads in relevant part, "The Department of State has power, directly, or through suitable channels to receive a letter rogatory issued, or request made, by a *tribunal in the United States*[.]" 28 U.S.C. § 1781(a)(2) (emphasis added). Letters rogatory are official requests from one country to another; they are the medium by which a country, "speaking through one of its courts," requests assistance from another country "acting through its own courts . . . entirely within [its] control." *Letters Rogatory,* Black's Law Dictionary (4th ed. 1951). The State Department, as the American representative in such matters, interfaces with foreign governments, not private arbitral bodies. "[T]ribunal in the United States," therefore, refers to adjudicative bodies with government-conferred authority. Construing § 1782 consistently with § 1781 thus requires "foreign or international tribunal[s]" to have government-conferred authority.

Section 1781 is an intertwined provision which confines "tribunal" to bodies with government-conferred authority. To avoid a statutory inconsistency, § 1782 should be similarly construed.

iii. Excluding private commercial arbitration under § 1782(a) promotes statutory harmony and avoids conflict.

Excluding private commercial arbitration under § 1782(a) promotes statutory harmony and avoids conflict. It is this Court's "duty to interpret Congress's statutes as a harmonious whole rather than at war with one another." Epic Sys. Corp., 138 S. Ct. at 1619. Generally, this Court attempts to "avoid anomalies" and "view the scheme . . . as 'symmetrical and coherent.'" Perez-Guzman v. Lynch, 835 F.3d 1066, 1074 (9th Cir. 2016) (quoting FDA v. Brown & Williamson Tobacco Corp., 529 U.S. 120, 133 (2000)).

Here, excluding private commercial arbitration from the scope of "foreign or international tribunal" would avoid putting § 1782(a) and the Federal Arbitration Act ("FAA") "at war with one another," promoting symmetry in the overall statutory scheme.

The FAA governs American domestic private arbitration. 9 U.S.C. § 7. Under implementing legislation for two international arbitration conventions, the FAA limits discovery requests from private foreign arbitral panels. 9 U.S.C. §§ 201–208, 301–307. Allowing these prohibited requests to be granted under § 1782 would put the two statutes "at war with one another." Conversely, excluding private commercial arbitration keeps § 1782 "part of the harmonious whole." The Seventh Circuit in Rolls-Royce used this context as a strong indicator that "foreign or international tribunal" only encompassed bodies with government-conferred authority. Rolls-Royce, 975 F.3d at 696.

Excluding private commercial arbitration as a "foreign or international tribunal" prevents a clash with the FAA and promotes symmetry within the overall statutory scheme.

C. Compelling discovery for use in private commercial arbitration does not encourage reciprocal foreign cooperation and is inconsistent with legislative history.

Compelling discovery for use in private commercial arbitration does not encourage reciprocal foreign cooperation and is inconsistent with legislative history. Should this Court find "tribunal" to be ambiguous, legislative history may serve as an "extrinsic aid." Herrera v. Zumiez, Inc., 953 F.3d 1063, 1071 (9th Cir. 2020) (quoting Nolan v. City of Anaheim, 92 P.3d 350, 352 (Cal. 2004)). Such a consultation, however, "is meant to clear up ambiguity, not create it." Milner v. Dep't of Navy, 562 U.S. 562, 574 (2011) (citing Sung v. McGrath, 339 U.S. 33, 49 (1950)).

Here, compelling broad discovery fails to promote international reciprocity and is inconsistent with legislative history, which never mentions private commercial arbitration.

Section 1782's stated purpose is not served by allowing discovery in private commercial arbitration. The 1964 amendment's stated purpose was to "improve judicial procedures" for ordering discovery for use in "foreign and international tribunals" and encourage other countries to "[o]btain . . . evidence abroad" for use in American proceedings. S. Rep. No. 88-1580, at 1

(1964), as reprinted in 1964 U.S.C.C.A.N. 3782, 3788. If Congress' purpose was to encourage reciprocal foreign cooperation, why would it include private commercial arbitration, which fails to encourage foreign governments to reciprocate?

As mentioned in Section A, the LCIA is independent of any country's legal system or government. It is hard to fathom, then, how American judicial assistance here or in any private commercial arbitration would encourage another country to obtain evidence for use in an American proceeding. In private commercial arbitration like LCIA, it is unclear which countries American judicial assistance is actually helping. Here, for example, England, as a country, has no reason to "pay back" an action that does not inherently help its own legal system. America's interest in reciprocal international judicial assistance is thus not served by facilitating discovery in such a private commercial arbitration.

Further legislative history excludes private commercial arbitration from § 1782(a)'s scope. The 1964 amendment substituted "tribunal" for "court," but the change does not expand into private commercial arbitration; it is limited to "foreign administrative tribunal[s] and quasi-judicial agenc[ies]." H.R. Rep. No. 88-1052, at 9 (1963). "Foreign administrative tribunal[s]" are state actors. So are quasi-judicial agencies where public administrative officers "investigate facts" to help form a "basis for their official action." *Quasi-Judicial*, Black's Law Dictionary (4th ed. 1951). As the Second Circuit recognized in Nat'l Broad. Co. v. Bear Stearns & Co., 165 F.3d 184 (1999), the authors of the legislative reports only had in mind "government entities such as administrative or investigative courts, acting as state instrumentalities or with the authority of the state." Id. at 189.

Expanding judicial assistance abroad so substantially "would not have been lightly undertaken by Congress without at least a mention . . . in the legislative record." Id. at 190. Yet,

in the six years between the 1958 Commission's formation and the 1964 amendment's enactment, private commercial arbitration was never mentioned.

Expanding "foreign or international tribunal[s]" to include private commercial arbitration would fail to serve § 1782's stated purpose of promoting reciprocal judicial assistance and would conjure a legal fiction absent from the legislative record.

D. Including private commercial arbitration under § 1782(a) would clash with the FAA and lead to bizarre discovery-access discrepancies.

Including private commercial arbitration under § 1782(a) would clash with the FAA and lead to bizarre discovery-access discrepancies. Foreign litigants would have greater access to discovery through the U.S. court system than domestic litigants in private commercial arbitration under an expansive view of § 1782(a). Congress cannot possibly have been intended this result.

As mentioned in Section B-iii, the FAA governs domestic arbitration. It permits only arbitral panels, not the litigants themselves, to petition for discovery enforcement. 9 U.S.C. § 7. Simply put, the FAA prohibits American litigants from petitioning a federal court for private commercial arbitration discovery enforcement. Id. But under Petitioner's view of § 1782, *foreign* litigants could petition for and obtain the very same discovery enforcement American litigants are barred from. Congress could not have intended to grant broader discovery access for use in foreign than domestic private commercial arbitration.

"[F]oreign or international tribunal" under § 1782(a) excludes private commercial arbitration because that avoids gifting foreign litigants greater federal district court discovery access than American litigants in private commercial arbitration.

CONCLUSION

This Court should affirm the district court's decision to deny the Petitioner's Application for an Order to Take Discovery for use in a Foreign Proceeding because § 1782(a)'s text and

context implicate government-conferred authority and because doing so is consistent with the statute's purpose and avoids bizarre discrepancies in foreign and domestic discovery access.

Date: March 21, 2022 Respectfully submitted,

2668473

Applicant Details

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Applicant Education

BA/BS From	**Columbia University**
Date of BA/BS	**June 2020**
JD/LLB From	**Harvard Law School** **https://hls.harvard.edu/dept/ocs/**
Date of JD/LLB	**May 23, 2024**
Class Rank	**School does not rank**
Law Review/Journal	**Yes**
Journal(s)	**Harvard Law Review**
Moot Court Experience	**No**

Bar Admission

Prior Judicial Experience

Judicial Internships/Externships	**No**
Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

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This applicant has certified that all data entered in this profile and any application documents are true and correct.

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June 16, 2023

The Honorable Denny Chin
United States Court of Appeals
Second Circuit
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Dear Judge Chin:

I am writing to apply for a clerkship in your chambers for the 2024 - 2025 term, or any subsequent term. I am a rising third-year law student at Harvard Law School and an editor of the *Harvard Law Review*, vols. 136 – 137.

My desire to clerk stems from my commitment to increasing access to justice. I was born in Lagos, Nigeria, and immigrated to Atlanta, Georgia when I was 6 years old. In those early days, my family of five squeezed into a one bedroom apartment and used food stamps to get by. I worked part-time throughout high school and college to both support myself and send money back home. My personal experiences have motivated me to work towards dismantling the barriers to justice present in our society and to advocate on behalf of those who find it most difficult to be heard, including immigrants, the incarcerated, and low-income individuals.

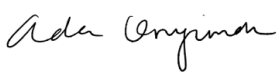
As a law student, I have had the opportunity to serve as a student attorney for the incarcerated through the Harvard Prison Legal Assistance Program (PLAP), and will be representing an incarcerated woman at her parole hearing this December. I also served as a law clerk for the National Veterans Legal Services Program (NVLSP) and worked with veterans who suffered military sexual trauma (MST) in the course of service. I also actively seek out research opportunities geared towards engendering social change: this academic year, I have participated in legal research focused on bettering inmate healthcare, advancing voting rights, and advocating for the well-being of children.

I believe my academic experiences have prepared me to be an asset to your chambers. For example, my research assistant positions and the *Law Review* have sharpened my legal writing, research, and oral advocacy skills. Additionally, my summer associateships at Kirkland & Ellis have equipped me with the ability to work quickly and collaboratively in a team to fulfill a shared goal.

HLS Professors Crystal S. Yang (617-496-4477), Guy-Uriel Charles (617-998-1742), and Michael Gregory (617-998-0108) have submitted separate letters of recommendation on my behalf. Justice Rosalie Abella (613-878-5468), a former Supreme Court Justice of Canada, Abigail Reynolds (202-265-8305), a Staff Attorney at the National Veterans Legal Services Program, and John O'Quinn (202-389-5191), a litigation partner at Kirkland & Ellis, have also offered to serve as references.

I have enclosed my resume, law school transcript, and writing sample. I would welcome the opportunity to interview with you, and I thank you for your consideration.

Sincerely,



Ada Onyimah

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EDUCATION

Harvard Law School, Cambridge, MA
Candidate for Juris Doctor, May 2024
Activities: *Harvard Law Review*, Editor, Vols. 136 – 137
Harvard Prison Legal Assistance Project, Student Attorney
Black Law Students Association (BLSA), Sponsorship Committee Chair
Awards: *Federal Circuit Bar Association*, Association Founder's Scholarship, 2023
Jack Kent Cooke Foundation, Cooke Graduate Scholarship, 2021 – 2024

Columbia University, New York, NY
Bachelor of Arts in Computer Science, May 2020
Activities: *Columbia Undergraduate Law Review*, Editor, Vols. 14 – 15
Columbia University Black Pre-Professional Society (CUBPS), Founder and President
Women in Computer Science, Chief Operating Officer

EXPERIENCE

Kirkland & Ellis LLP
Summer Associate in New York, NY, May 2023 – Present
- Working primarily in the Intellectual Property Litigation and Investment Funds practice areas
- Conducting legal research and drafting memoranda on patent litigation and SEC disclosures

Summer Associate in Washington, D.C., May 2022 – June 2022
- Worked primarily in the Intellectual Property Litigation and Congressional Investigations practice areas, and completed several International Human Rights pro bono assignments
- Conducted legal research, analyzed congressional testimony, and assisted in preparing a client to testify before the House January 6th Committee

Harvard Law School, Cambridge, MA
Research Assistant to Professor Crystal S. Yang, July 2022 – Present
- Conducting legal research on the effect of health care accreditation on the quality of health care received by incarcerated individuals in medium-sized jails nationwide
- Drafted a research memo tracking state-by-state adherence to health standards in U.S. jails

Research Assistant to Professor Guy-Uriel Charles, September 2022 – November 2022
- Conducted legal research and assisted in drafting of an amicus brief in *Moore v. Harper*, a key voting rights case on partisan and racial gerrymandering heard by the Supreme Court in 2022

National Veterans Legal Services Program, Washington, D.C.
Law Clerk, June 2022 – July 2022
- Performed legal research and screened cases for eligibility in order to help veterans and their families obtain previously denied benefits from the U.S. Department of Veterans Affairs
- Worked with veterans who suffered military sexual trauma (MST) in the course of service and were subsequently diagnosed with mental health conditions post-discharge

JPMorgan Chase & Co., New York, NY
Software Engineer, July 2020 - July 2021
- Improved an antiquated internal web application, increasing developer efficiency by 40%
- Mentored aspiring engineers of color through a JPMC diversity initiative
- Received an Employee Recognition Award for outstanding work on an optimization project for the Chase banking website, used by nearly 51 million users

INTERESTS

Traveling (twelve countries and counting), figure skating (competitor ages 8 – 12), and true-crime documentaries. Other affiliations include First Class, an organization for first-generation students, and the African Law Association.

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Date of Issue: June 7, 2023
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Record of: Adaeze Anita Onyimah
Current Program Status: JD Candidate

JD Program

Fall 2021 Term: September 01 - December 03

1000	Civil Procedure 1 Rubenstein, William	P	4
1001	Contracts 1 Okediji, Ruth	H	4
1006	First Year Legal Research and Writing 1B Havasy, Christopher	P	2
1003	Legislation and Regulation 1 Tarullo, Daniel	H	4
1004	Property 1 Mann, Bruce	P	4
	Fall 2021 Total Credits:		18

Winter 2022 Term: January 04 - January 21

1059	The Craft of Lawyering Lee, William	CR	2
	Winter 2022 Total Credits:		2

Spring 2022 Term: February 01 - May 13

2011	Art of Social Change Gregory, Michael	H	2
1024	Constitutional Law 1 Eidelson, Benjamin	P	4
1002	Criminal Law 1 Yang, Crystal	H	4
1006	First Year Legal Research and Writing 1B Havasy, Christopher	H	2
1005	Torts 1 Gersen, Jacob	P	4
	Spring 2022 Total Credits:		16
	Total 2021-2022 Credits:		36

Fall 2022 Term: September 01 - December 31

2928	Election Law Charles, Guy-Uriel	H	3
2984	Seeing Criminal (In)Justice: Examining the Interplay of Visual Media, Storytelling and Criminal Law Cohen, Rebecca Richman	H	2
3141	The Judicial Role in a Democracy Abella, Rosalie Silberman	H	2
2250	Trusts and Estates Sitkoff, Robert	P	4
	Fall 2022 Total Credits:		11

Winter 2023 Term: January 01 - January 31

2411	JuryX Workshop Nesson, Charles	H	3
	Winter 2023 Total Credits:		3

Spring 2023 Term: February 01 - May 31

2048	Corporations Sanga, Sarath	H	4
2079	Evidence Clary, Richard	P	3
7000W	Independent Writing Yang, Crystal	H	2
7000W	Independent Writing Gersen, Jacob	H	2
3500	Writing Group: Problems in Public Law Gersen, Jacob	CR	1
	Spring 2023 Total Credits:		12
	Total 2022-2023 Credits:		26

Fall 2023 Term: August 30 - December 15

2059	Designing Dispute Systems for Justice Viscomi, Rachel	~	2
2086	Federal Courts and the Federal System Goldsmith, Jack	~	5
3261	Law, Business, and the Public Good Tallarita, Roberto	~	2
2934	Patent Trial Advocacy Tompros, Louis	~	3
	Fall 2023 Total Credits:		12

Winter 2024 Term: January 02 - January 19

2169	Legal Profession: Government Ethics - Scandal and Reform Rizzi, Robert	~	3
	Winter 2024 Total Credits:		3

Spring 2024 Term: January 22 - May 10

2000	Administrative Law Block, Sharon	~	4

continued on next page

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Record of: Adaeze Anita Onyimah

Date of Issue: June 7, 2023
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Spring 2024 Total Credits:	4
Total 2023-2024 Credits:	19
Total JD Program Credits:	81

End of official record

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Transcript questions should be referred to the Registrar.

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In accordance with the Family Educational Rights and Privacy Act of 1974, information from this transcript may not be released to a third party without the written consent of the current or former student.

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A student is in good academic standing unless otherwise indicated.

Accreditation

Harvard Law School is accredited by the American Bar Association and has been accredited continuously since 1923.

Degrees Offered

J.D. (Juris Doctor)
LL.M. (Master of Laws)
S.J.D. (Doctor of Juridical Science)

Current Grading System

Fall 2008 – Present: Honors (H), Pass (P), Low Pass (LP), Fail (F), Withdrawn (WD), Credit (CR), Extension (EXT)

All reading groups and independent clinicals, and a few specially approved courses, are graded on a Credit/Fail basis. All work done at foreign institutions as part of the Law School's study abroad programs is reflected on the transcript on a Credit/Fail basis. Courses taken through cross-registration with other Harvard schools, MIT, or Tufts Fletcher School of Law and Diplomacy are graded using the grade scale of the visited school.

Dean's Scholar Prize (*): Awarded for extraordinary work to the top students in classes with law student enrollment of seven or more.

Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
May 2011 - Present

Summa cum laude	To a student who achieves a prescribed average as described in the Handbook of Academic Policies or to the top student in the class
Magna cum laude	Next 10% of the total class following *summa* recipient(s)
Cum laude	Next 30% of the total class following *summa* and *magna* recipients

All graduates who are tied at the margin of a required percentage for honors will be deemed to have achieved the required percentage. Those who graduate in November or March will be granted honors to the extent that students with the same averages received honors the previous May.

Prior Grading Systems
Prior to 1969: 80 and above (A+), 77-79 (A), 74-76 (A-), 71-73 (B+), 68-70 (B), 65-67(B-), 60-64 (C), 55-59 (D), below 55 (F)

1969 to Spring 2009: A+ (8), A (7), A- (6), B+ (5), B (4), B- (3), C (2), D (1), F (0) and P (Pass) in Pass/Fail classes

Prior Ranking System and Rules for Determining Honors for the JD Program
Latin honors are not awarded in connection with the LL.M. and S.J.D. degrees.
Prior to 1961, Harvard Law School ranked its students on the basis of their respective averages. From 1961 through 1967, ranking was given only to those students who attained an average of 72 or better for honors purposes. Since 1967, Harvard Law School does not rank students.

1969 to June 1998	General Average
Summa cum laude	7.20 and above
Magna cum laude	5.80 to 7.199
Cum laude	4.85 to 5.799

June 1999 to May 2010
Summa cum laude General Average of 7.20 and above (exception: *summa cum laude* for Class of 2010 awarded to top 1% of class)
Magna cum laude Next 10% of the total class following *summa* recipients
Cum laude Next 30% of the total class following *summa* and *magna* recipients

Prior Degrees and Certificates
LL.B. (Bachelor of Laws) awarded prior to 1969.
The I.T.P. Certificate (not a degree) was awarded for successful completion of the one-year International Tax Program (discontinued in 2004).

June 16, 2023

The Honorable Denny Chin
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Dear Judge Chin:

I am writing on behalf of Adaeze (Ada) Anita Onyimah (Harvard Law School Class of 2024), who has applied for a clerkship in your chambers. Ada is smart, curious, and hardworking. I think she would be a terrific addition to your chambers and I recommend her with great enthusiasm.

Ada was in my Criminal Law class in Spring 2022. I found Ada to be well prepared in class every time I called on her. Ada was also a frequent contributor to class discussions, demonstrating nuance and open-mindedness in sharing her opinions and responding to the views espoused by her classmates. Ada also wrote a very good exam for my course, receiving an H grade, reserved for roughly the top third of the class. My blindly-graded exam consisted of a complex issue spotter on issues of conspiracy and accomplice liability that required knowledge of both common law approaches and the Model Penal Code, as well as a policy question on prosecutorial charging discretion and plea bargaining. Her exam demonstrated an excellent understanding of doctrine and policy, and her writing was clear and succinct.

In addition, Ada has also been working for me as a research assistant on a large-scale randomized control trial assessing the impact of health care accreditation on healthcare delivery in 40 jail systems across the United States. Ada has exhibited enthusiasm and attention to detail on this project and has been a huge help in doing extensive literature reviews of the landscape on health care accreditation in jails, recruiting jails for our study, and helping us with grant applications. She is a real team player, works well with others, and has excellent writing and research skills.

I also supervised Ada's independent writing project in Spring 2023. Ada wrote a very interesting paper on the intersection between police shootings of parents and constitutional rights to "parenthood." In this paper, Ada asks the intriguing question of whether the state should be liable when state actors incidentally deprive a child of the presence in their life of a parental figure. Ada ultimately concludes yes – that where the interference is so grossly negligent or deliberately indifferent that it shocks the conscience of the court, families of victims should be allowed to recover. Ada's paper was well-written and researched, and it taught me much.

From our various conversations inside and outside of class, I have also observed Ada to be kind, empathetic, and hardworking. Based on group discussions with classmates, I have found her to be liked and respected by her classmates. And she has done extensive direct service work as a student attorney for the Harvard Prison Legal Assistance Project and as a law clerk for the National Veterans Legal Services Program helping veterans who were victims of Military Sexual Trauma (MST). I know that Ada is very interested in pursuing a career in litigation and believe she would benefit greatly from a clerkship in your chambers.

Based on these observations, I am confident that Ada will be a superb addition to chambers. She is bright, professional, enthusiastic, and eager to learn. I have no doubt that she will get along with everyone in your chambers. Please do not hesitate to contact me if I can be of further assistance.

Best wishes,
Crystal S. Yang

Crystal Yang - cyang@law.harvard.edu - 617-496-4477

June 16, 2023

The Honorable Denny Chin
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Dear Judge Chin:

I am writing this letter in enthusiastic support of Ada Onyimah's application for a clerkship in your chambers. I first got the opportunity to know Ada when she was a 1L in my course The Art of Social Change, and I am now supervising her research into the constitutional right to family integrity. In both contexts, Ada's writing proficiency, research skills, and enthusiasm for the law makes me confident that she will be an exceptional law clerk.

In my class, Ada stood out. She asked our guest speakers insightful questions and was an active participant in small-group discussions. She consistently raised challenging questions about legal advocacy and systemic reform on behalf of children. In particular, she productively probed my own work creating trauma-sensitive schools, considering the merits and drawbacks of this approach in black and brown communities. Her reflection papers were incisive, well-written, and thoroughly supported, evincing a deep engagement with both the course material and the contributions of her classmates. She went above and beyond in her group project by personally producing and editing an excellent video on how insufficient access to technology affected low-income children during the pandemic. Overall, Ada was a student with exceptional insight and analytic skill, and a review of her academic record reveals that her performance in my course was repeated across her second-year courses.

I am also currently supervising Ada's ambitious research into a child's constitutional right to family integrity, which will become her capstone project for our Youth Advocacy Fellows Program. She hopes to argue that children deprived of companionship with parents who were wrongfully convicted should be able to claim the substantive due process right to family integrity. Although she understands this is a novel argument and is only at the beginning of her research process, she is pursuing the project with rigor and tenacity. Ada has provided me with a cogent overview of the project and excellent summaries of the relevant cases, and she has diligently kept me up to date with her research progress without prompting.

Just as important as Ms. Onyimah's academic ability is her passion for and dedication to social justice. She has served as a student attorney for incarcerated individuals, holds a leadership position in the Black Law Student's Association, and volunteered at a legal aid program for veterans who were victims of military sexual trauma. It is also my impression that she selectively chooses research assistant positions with an eye for opportunities to contribute to increasing access to justice. For example, she is currently conducting research into health standards in U.S. jails and she also helped draft an amicus brief for a pivotal election law case last semester. She brings a mature professionalism to all of her endeavors and has excelled both inside and outside the classroom.

Overall, Ada has proven herself to be an incredibly bright and capable young woman, and is adept at engaging with challenging material and supporting her theories and arguments in a precise and thoughtful manner. She brings energy to all of her pursuits and is a joy to be around.

In short, I recommend Ada to you strongly and without reservation, and truly believe she will be a valuable addition to your chambers. If I can be of any further assistance in your review of her application, please do not hesitate to contact me.

Sincerely,

Michael Gregory, Esq.

Clinical Professor of Law

Faculty Director, Youth Advocacy and Policy Lab (Y-Lab)

Director, Education Law Clinic

Harvard Law School

Member of the Faculty

Harvard Graduate School of Education

June 16, 2023

The Honorable Denny Chin
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Dear Judge Chin:

I am writing to strongly recommend Adaeze Anita Onyimah and to support her application to clerk in your Chambers. Ms. Onyimah graduated from Columbia University and Harvard Law School where she was an editor of the Harvard Law Review. At Harvard, among her many tasks, she worked with me and Professor Crystal Yang. She was also a member of the Black Law Students Association. As you can tell from her transcript, she was a great student at HLS. She is very smart, sagacious, perceptive, is an indefatigable worker.

Ms. Onyimah was a student in my Election Law Class where she was a very active and thoughtful participant. She wrote a very creative and persuasive paper on the modern applications of the Ku Klux Klan Act. We met numerous times to select a topic, narrow it down, review her outline, and sharpen her argument. The paper argued that the Act offered a remedy for those interested in combatting voter suppression efforts. It canvassed the legislative history of the Act and cases that have interpreted the Act to show how the Act would apply to modern efforts at voter intimidation and vote suppression.

In addition, she was among of group of students who worked with me to draft an amicus brief for the Supreme Court of the United States on the Harper v. Moore case. She was actively involved in the planning calls and strategy sessions on the brief. She wrote four memos summarizing relevant caselaw from Arkansas, South Carolina, and Oregon.

Having had many opportunities to supervise Ms. Onyimah's legal written work, I can attest to her superior legal writing and research abilities. Needless to say, we would have relied on her research for a brief to the Supreme Court if we did not have complete faith in her abilities. Her research memos for the legal brief were thorough and on point. She examined every potential issue and ran down all the cases that were potentially relevant. The writing was clear and precise. It was evident from the memo which cases we needed to emphasize and which ones we could pay less attention to. Her research paper for my class was equally compelling. Although it was more of an "academic" paper, its legal analysis was spot on. The paper was not that different from a research memo a bench memo, or a draft opinion that one might write for a judge.

Ms. Onyimah also has a delightful personality. She is a first-generation student. She is very much a team player. In fact, she is a former high school and college athlete. She very much carries that experience to her professional life. She will be a great person to have in Chambers. She is also very trustworthy, easygoing, and hardworking. She cares deeply about others and about making a difference in this world. She is respectful but not shy about asking questions or making a point. She will fit very nicely into any working environment.

Based upon my firsthand observations, I can confidently say that Ms. Onyimah will be an excellent law clerk. I am sure that you will receive a lot of applications from a lot of extremely qualified individuals. Ms. Onyimah should be at the very top of that group. It has been my pleasure to work with her and I could not be more impressed by her abilities. I very much hope that you at least interview her. She will be a fabulous addition to your Chambers.

Sincerely,

Guy-Uriel Charles
Charles Ogletree, Jr. Professor of Law

ADAEZE (ADA) ANITA ONYIMAH
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WRITING SAMPLE

This 10-page case comment was written for the *Harvard Law Review* writing competition under a one-week time constraint with a closed set of sources provided at the outset of the competition. It focuses on a recent Fifth Circuit case, *United States v. Smith*, 997 F.3d 215 (5th Cir. 2021), and has not undergone any outside editing. Please note that the comment was based on copies of cases that were differently paginated from the Federal Reporter, and thus there may be discrepancies in pincites to certain cases.

Defining Possession under 18 U.S.C. § 922(g)(1) – Since 1968, federal law has prohibited "any person . . . who has been convicted . . . of a crime punishable by imprisonment for a term exceeding one year" from possessing a firearm.[1] Due to courts' expansive definition of "possession" as including both "constructive" and "actual" possession, [2] the burden of proof is relatively low for prosecutors attempting to obtain a § 922(g)(1) "felon-in-possession" conviction.[3] Though the Fifth Circuit has considered few cases in which the "actual possession" of a firearm was at issue, the court has routinely considered factors such as a defendant's fingerprints on the firearm[4] or a defendant's admission to possessing the firearm[5] as sufficient to prove actual possession of the firearm. Recently, in *United States v. Smith*,[6] the Fifth Circuit held that because the defendant's mere "touching" of a firearm did not constitute possession of the firearm, the lower court plainly erred in accepting the defendant's guilty plea to that charge. By focusing on the definition of "possession" rather than addressing the crucial role that "control" plays in actual and constructive possession cases, the court further obfuscated the already unsettled theory of actual possession.

On May 13, 2019, Tredon Smith was arrested and questioned regarding three stolen firearms that had been recovered by law enforcement.[7] During questioning, Smith was shown an

[1] 18 U.S.C. § 922(g)(1).
[2] *See e.g.*, United States v. Huntsberry, 956 F.3d 270, 279 (5th Cir. 2020); United States v. Hagman, 740 F.3d 1044, 1048, 1049 & n.2 (5th Cir. 2014).
[3] *See* Markus Dirk Dubber, *Policing Possession: The War on Crime and the End of Criminal Law*, 91 J. CRIM. L. & CRIMINOLOGY 829, 836 (2000-2001) ("So broad is the reach of possession offenses, and so easy are they to detect and then to prove, that possession has replaced vagrancy as the sweep offense of choice."); *see also* Zach Sherwood, Note, *Time to Reload*, 70 DUKE L.J. 1429, 1449 (2021) ("Given the felon-in-possession ban's worthy purpose of reducing gun violence, its far-reaching scope is no doubt deliberate").
[4] *See* United States v. Jackson, 389 F. App'x 357, 359 (5th Cir. 2010).
[5] *See* United States v. Arteaga*,* 436 F. App'x 343, 348–49 (5th Cir. 2011).
[6] 997 F.3d 215 (5th Cir. 2021).
[7] R. at 2.

image of one of the firearms – a silver Smith & Wesson .38 caliber revolver.[8] Smith was able to identify the caliber of the revolver without detectives mentioning it.[9] Further, Smith admitted to having seen and "touched" the revolver at a friend's house before the weapon was recovered.[10] The detectives confronted Smith a second time regarding all three firearms, asking Smith why his fingerprints "would be" on the weapons.[11] In response, Smith maintained that he did not remember touching the other two firearms but knew "for a fact" that he had touched the .38 revolver.[12] Detectives then ran a computerized criminal check on Smith, revealing that he had previously been convicted of a felony offense in July 2015.[13]

Smith was subsequently charged with being a felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1), to which he pled guilty.[14] Pursuant to his guilty plea, Smith signed a factual basis document confirming that he "touched" the revolver.[15] He also signed a written consent form to plead before a U.S. magistrate judge.[16] The magistrate judge recommended that the district court accept Smith's guilty plea,[17] and the district court accordingly accepted Smith's factual basis document as sufficient for his guilty conviction.[18] The district court sentenced Smith to 57 months of imprisonment with three years of supervised release to follow.[19] Smith timely appealed.[20] The dispositive question on appeal was whether the district court incorrectly

[8] *Id.*
[9] *Id.*
[10] *Id.*
[11] *Id.* Note, the factual basis document does not indicate that Smith's fingerprints were in fact found on any of the firearms, but rather that the detectives asked Smith why they "would be." *Id.*
[12] *Id.*
[13] *Id.*
[14] R. at 3.
[15] R. at 2.
[16] *Id.*
[17] R. at 5.
[18] R. at 4.
[19] United States v. Smith, 997 F.3d 215, 218 (5th Cir. 2021).
[20] *Id.*

concluded that Smith's admission to touching the .38 revolver established "possession" as required to sustain a conviction under 18 U.S.C. § 922(g)(1).[21]

The Fifth Circuit vacated and remanded.[22] Writing for the majority,[23] Judge Haynes held that the district court had plainly erred in accepting Smith's guilty plea for illegal possession of a firearm on the sole basis of his admission to touching the firearm.[24] The majority began by defining actual possession of a firearm as having "direct physical control" over it, such as when one carries it on their person or is tied to it through DNA, fingerprints, or other forensic evidence.[25] The majority distinguished constructive possession as "broader" than actual possession in that it describes the defendant's "ownership, dominion, or control" over the spatial area in which the firearm was found, rather than the firearm itself.[26] The majority noted that "control" was the common denominator between the two types of possession, and conviction of a defendant under either theory would be improper if he or she lacked control over the firearm.[27] The majority found that Smith's mere touching of the revolver, on its own, did not exhibit the requisite amount of control necessary to support his guilty plea to possession of a firearm.[28]

The majority used the plain text of § 922(g) and an analysis of its own case law to support its finding that touching does not constitute possession.[29] It acknowledged that the plain text of § 922(g) proscribes only "possession" and does not delve further into what specific forms of

[21] *Id.*
[22] *Id.* at 225.
[23] Judge Haynes was joined by Judge King. *Id.* at 218.
[24] *Id*. at 225.
[25] *Id.* at 219.
[26] *Id.*
[27] *Id.*
[28] *Id.* at 225.
[29] *Id.* at 221. The court also states that "logic" supports the assertion that touching is insufficient to establish possession. *Id.*

contact constitute possession.[30] To determine whether "touch" can constitute "possession," the majority cited the second edition of Webster's New International Dictionary,[31] which defines "possession" of an item as having "mastery" of it, or "to have and hold [it] as property."[32] The majority contrasted this definition with the dictionary's definition of "touch": "[t]o lay the hands, fingers, etc., upon so as to "feel" an object or "to perceive [it] by means of the tactile sense."[33] From these definitions, the majority concluded that no one could confuse merely touching an object with having mastery of it.[34] The majority then pointed to its own precedent, listing several cases in which it had "emphasized that possession requires something more than touching."[35]

Based on these findings, the majority concluded that the district court had "clear[ly] and obvious[ly]" erred in treating Smith's admission to touching the .38 revolver as a sufficient factual basis for his guilty plea to a possession charge.[36] Further, because the error had affected Smith's substantial rights,[37] the majority concluded that the district court had plainly erred and must correct its error.[38]

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[30] *Id.* at 221.
[31] WEBSTER'S NEW INTERNATIONAL DICTIONARY 1926 (2d ed. 1934) ("WEBSTER'S SECOND").
[32] *Id.* The court noted that the dictionary's definitions of "possession" and "touch" are "plainly applicable" to both constructive and actual possession. *Smith*, 997 F.3d at 222. The court also noted that the Supreme Court had used the same dictionary and edition to interpret authorities from 1986. *Id.*
[33] *Smith*, 997 F.3d at 221. The court noted that "every day, humans touch countless things we don't 'possess,' such as countertops at a grocery store." *Id.* at 221–22.
[34] *Id.* at 221. Interestingly, one piece of legislative history indicates that the aim of the Federal Firearms Act (FFA) of 1938 was to "keep[] firearms out of the hands of…felons." *See* United States v. Teemer, 394 F.3d 59, 64 (1st Cir. 2005) (quoting Barrett v. United States*,* 423 U.S. 212, 220 (1976)).
[35] *Id.* at 223; *See e.g.,* United States v. Huntsberry, 956 F.3d 270, 279–80 (5th Cir. 2020); United States v. Hagman, 740 F.3d 1044, 1048, 1049 & n.2 (5th Cir. 2014); United States v. Meza, 701 F.3d 411, 418–19 (5th Cir. 2012).
[36] *Id.* at 224.
[37] *Id.* ("[B]ut for the error, [Smith] would not have entered the plea").
[38] *Id.* at 225 ("[T]he error also had a serious effect on the fairness and integrity of the proceedings").

Judge Smith dissented.[39] First, he outright rejected the majority's wholesale reliance on constructive possession cases, finding them inapposite to the actual possession case at hand.[40] Second, unlike the majority, he was unconvinced that cases such as *United States v. Huntsberry*,[41] *United States v. Meza,*[42] and *United States v. De Leon*[43] established a clear pattern of possession requiring more than touching.[44] In fact, he noted, in *De Leon* the court had implied that touch *could* establish possession such that a "thumbprint on [a] box of ammunition would…lead a jury to reasonably infer that [the defendant]…possessed control over [the box]."[45] He also questioned the applicability of the majority's dictionary of choice, deeming it too outdated to adequately portray the meaning of "possession" as Congress intended it when drafting § 922(g)(1).[46] Instead, he consulted the more modern third edition of Webster's New International Dictionary, which defines "possession" as "seiz[ing] or gain[ing] control" of an object.[47] Under this definition, he argued, touching a firearm would qualify as "seiz[ing]" it and, thus, possessing it.[48] Lastly, he warned that the court's new and ambiguous "possession" inquiry would be difficult for lower courts to interpret and administer when deciding whether the government has adequately proven actual possession.[49]

Though it purported to align seamlessly with precedent, *Smith* drastically modified the actual possession analysis within the Fifth Circuit by creatively construing the meaning and

[39] *Id.*
[40] *Id* at 226.
[41] 956 F.3d 270 (5th Cir. 2020).
[42] 701 F.3d 411 (5th Cir. 2012).
[43] 170 F.3d 494 (5th Cir. 1999).
[44] *Id.* at 497.
[45] *Id.* at 227 (quoting United States v. De Leon, 170 F.3d 494, 498 (5th Cir. 1999)).
[46] *Id.* at 228.
[47] *Id.* at 229 (quoting WEBSTER'S NEW INTERNATIONAL DICTIONARY 1770 (3rd ed. 1961) ("WEBSTER'S THIRD")).
[48] *Smith*, 997 F.3d at 228–29.
[49] *Id.*

significance of "possession." First, the court's decision to painstakingly define "possession" and entirely ignore "control", the term at the heart of the case, signaled an abandonment of the court's previously nuanced approach to determining actual and constructive possession. Second, the Court's application of constructive possession case law to an actual possession case was unprecedented, provided little guidance for lower courts navigating the already unsettled theories of possession, and will likely lead to inconsistent rulings within the Fifth Circuit.

Rather than directly confront the legal distinction between actual and constructive possession, the court vacated and remanded the lower court's holding by arbitrarily selecting "possession" as the fulcrum of the two theories of possession. However, at the outset of its opinion, the court clearly stated that "control" was the "common denominator" between constructive and actual possession.[50] It even defended its consideration of constructive possession case law in an actual possession case by claiming that doing so was a "straightforward recognition that both kinds of possession—actual and constructive—require the Government to demonstrate *control* over an item."[51]

These acknowledgments of control as the decisive factor in proving possession make the court's sole focus on the meaning of "possession" all the more puzzling.[52] The court begged the question by including "control" as part of its "possession" definition, saying that to "possess something is to control it."[53] It then introduced two more definitions of "possession": to be "master of" an item and to "have and hold [it] as property."[54] In an attempt to cabin the implications of its decision, the *Smith* court leaned heavily on the "mastery" definition and

[50] *Id.* at 219.
[51] *Id.* at 219 n.5 (emphasis added).
[52] *Id.* at 221.
[53] *Id.* (emphasis added).
[54] *Id.*

avoided addressing whether "hav[ing] and hold[ing]" a firearm would constitute possession under its new framework, punting such a determination down to the lower courts.[55] The court considered Smith's lack of "mastery" over the firearm as dispositive, and declined to continue the well-settled actual possession analysis.[56]

In the wake of *Smith*, lower courts must now follow the logically problematic construction left behind by the court. With no definition of "control" and a circular definition of "possession," lower courts will likely ignore the nuances of both theories of possession in favor of first determining whether the government has proven the defendant's "mastery" over the firearm.[57] This leaves both the government and defendants with little guidance on what sort of control is necessary to prove possession generally and actual possession specifically.[58] Thus, the central question of "control" is left not only unanswered by *Smith*, but further obfuscated.

The approach espoused in *Smith* is especially jarring when compared to the court's previously nuanced approach to determining both actual and constructive possession. Prior to *Smith*, the court approached every possession case by first defining the two theories of possession, and then analyzing the level of control that the defendant exercised over either the firearm itself or its surroundings.[59] This approach more directly addressed the nuances between both theories of possession by applying each theory's case law and unique definition of "possession" and "control" to the facts at hand. However, by engaging in the unprecedented

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[55] *Id.* at 223 ("We…need not decide every interaction with an item that could qualify as possession. We simply conclude that the level of interaction here (which…begins and ends with 'touching'), without more, is not enough").
[56] *Id.* at 224.
[57] The court admits to focusing its analysis on "what it takes to show the possession element itself" rather than a particular theory of possession. *Id.*
[58] In *United States v. Teemer*, 394 F.3d 59 (1st Cir. 2005), the First Circuit expressed similar concerns about judges filling in gaps in felon-in-possession case law with glosses and limitations conveyed in jury instructions because "every such gloss imports potential problems of its own." *Teemer*, 394 F.3d at 64.
[59] *See, e.g.*, *Hagman*, 740 F.3d 1044; *Meza*, 701 F.3d 411; *Huntsberry*, 956 F.3d 270; *De Leon*, 170 F.3d 494; United States v. Geiger, 1 F.3d 1238 (5th Cir. 1993).

application of constructive possession case law to an actual possession case, the court blurred the line between the two theories unnecessarily.

For example, when considering constructive possession arguments, the court had previously taken an expansive approach to determining whether the defendant had exercised "control" over the item.[60] In *Geiger*, the court found constructive possession when a defendant was merely discovered in the proximity of a firearm bearing his fingerprints.[61] After *Smith*, however, the scope of constructive possession is unclear; the court's definition of possession as "mastery" of an object ostensibly applies to both the constructive and actual theories of possession. Further, "mastery" colloquially implies a higher standard of dominion and ownership than mere "control", and so *Smith* may increase the burden of proof facing the government should they choose to pursue conviction under the constructive possession theory. So, in cases such as *Geiger* where the gun was not found within the felon's dwelling, the government must now prove not only that the defendant had *access* to the dwelling and *control* over the dwelling, but also that they had sufficient "mastery" over it to constitute possession.

Though *Smith* complicates the constructive possession analysis, the decision has a much greater negative impact on the actual possession analysis. Among other things,[62] the court had previously considered the presence of a defendant's fingerprints on a firearm or a defendant's confession to possessing the firearm as sufficient to prove actual possession.[63] Unlike the hazier

[60] See, e.g., United States v. Clark, 226 F. App'x 407, 408 (5th Cir.2007) (finding constructive possession where the weapon was discovered in a bag on the passenger floorboard of the defendant's vehicle); United States v. Millikin, 136 F.3d 136, 1998 WL 30008, *1 (5th Cir.1998) (finding constructive possession where the government proved that defendant knew of weapons in his house and at least one of the firearms was found next to his bed).
[61] *Geiger*, 1 F.3d at 2.
[62] The court has also found eyewitness accounts of a defendant holding the firearm to be sufficient to prove constructive possession. *See e.g.*, United States v. Cantu, 340 F. App'x 186, 189 (5th Cir.2009) (finding actual possession where eyewitnesses saw the defendant carrying objects to the place where firearms were recovered).
[63] *See generally Geiger*, 1 F.3d at 2; *De Leon*, 170 F.3d at 497.

boundaries of constructive possession, the court consistently applied these specific criteria when considering actual possession cases. For example, in *United States v. Hagman*,[64] the court found the absence of forensic evidence and the lack of a confession by the defendant sufficient to preclude actual possession.[65] However, in *Smith*, the court considered Smith's confession to touching the firearm as insufficient to prove actual possession in the absence of forensic evidence, such as his fingerprint on the firearm.[66] In fact, the court seemed to insinuate that even if Smith had left behind a fingerprint, it may still have been insufficient to prove possession if the fingerprint was not "the sort of fingerprint evidence that would suggest [he] controlled the firearm."[67]

Consequently, under *Smith*, a defendant who leaves a fingerprint may be subject to a drastically different outcome than a defendant that simply wipes the print off and outright admits to touching the firearm. Though the court could have elected to explain the reason why an admission to touching a firearm carries less probative weight than a fingerprint on the weapon, it instead cast doubt onto two well-settled factors in the actual possession analysis while declining to set forth any new guidelines regarding the role that confessions and forensic evidence will play in the actual possession analysis moving forward. By failing to cabin its possession analysis to one or the other theory of possession, the court subverted the previously nuanced role that control played in the theories of actual and constructive possession.

Underneath the less-than-satisfying rationale of *Smith* likely lies a well-intentioned motive: constraining the notoriously overinclusive scope of possession laws. § 922(g)(1) is a

[64] 740 F.3d 1044 (5th Cir. 2014).
[65] *Id.* at 1049; *See generally* United States v. Jones, 484 F.3d 783 (5th Cir. 2007).
[66] *Smith*, 997 F.3d at 220.
[67] *Id.* The court does not suggest that the introduction of such fingerprint evidence would have been dispositive, but rather "[i]f the Government had [fingerprint evidence]… it could easily have included it in the record." *Id.*

manifestation of decades of focus on risk-reduction measures within criminal law and the criminal justice system.[68] In enacting the Gun Control Act, Congress made clear that those previously convicted of a felony "may not be trusted to possess a firearm without becoming a threat to society."[69] In this way, felon-in-possession offenses categorically consider all felons, including those convicted of non-violent felonies, as "threat[s] for the rest of their lives,"[70] rendering the otherwise individual right to own a firearm inaccessible.[71]

Though § 922(g)(1) is race-neutral on its face, the disproportionate rate at which Black Americans are arrested, prosecuted, and convicted of felony offenses make Black populations most susceptible to possession offenses.[72] Given the low burden of proof required to obtain a possession conviction,[73] constraining the scope of what sort of behavior qualifies as possession may be necessary in order to maintain equity and further racial justice. However, the unclear application of *Smith* leaves holes in the possession doctrine that will be filled by prosecutorial and judicial discretion, which may counterintuitively hurt rather than help minority populations. Though the *Smith* court may have hoped to limit the scope of possession in the context of felon-in-possession cases, clearer guidance is necessary to achieve that goal.

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[68] For example, in 2017, former Attorney General Sessions issued a memo to federal prosecutors urging them to "prioritize taking illegal guns off of our streets." *Federal Gun Prosecutions Up 23 Percent After Sessions Memo*, U.S. DEP'T OF JUST. (July 28, 2017). This led to a sharp increase in the number of defendants charged with unlawful possession of a firearm under 18 U.S.C. § 922 over the following three months. *Id.*

[69] 114 CONG. REC. 14,773 (May 23, 1968) (statement of Sen. Long).

[70] Emma Luttrell Shreefter, *Federal Felon-in-Possession Gun Laws: Criminalizing a Status, Disparately Affecting Black Defendants, and Continuing the Nation's Century-Old Methods to Disarm Black Communities*, 21 CUNY L. REV. 143, 154 (2018).

[71] Felon-in-possession bans gained constitutional significance following the Supreme Court's decision in *District of Columbia v. Heller*, 554 U.S. 570 (2008), which established the individual right to own a firearm. *See also* Zach Sherwood, Note, *Time to Reload*, 70 DUKE L.J. 1429, 1432 (2021).

[72] Further, once the government secures a felon-in-possession conviction, federal law provides for a maximum sentence of ten years for a § 922(g)(1) violation, with the average sentence for a felon-in-possession offender exceeding five years. Shreefter, *supra* note 68, at 156.

[73] *See* Dubber, *supra* note 3, at 859 ("In many cases, possession statutes also save prosecutors the trouble of proving that other major ingredient of criminal liability in American criminal law, mens rea, or a guilty mind").

Applicant Details

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Applicant Education

BA/BS From	**University of Michigan-Ann Arbor**
Date of BA/BS	**April 2018**
JD/LLB From	**University of Minnesota Law School** **http://www.law.umn.edu**
Date of JD/LLB	**May 11, 2024**
Class Rank	**15%**
Law Review/Journal	**Yes**
Journal(s)	**Minnesota Law Review**
Moot Court Experience	**Yes**
Moot Court Name(s)	**McGee National Civil Rights Moot Court**

Bar Admission

Prior Judicial Experience

Judicial Internships/ Externships	**Yes**

Post-graduate Judicial Law Clerk	**No**

Specialized Work Experience

Specialized Work Experience	**Immigration**

Recommenders

Bentley, Elizabeth
ebentley@umn.edu
612-625-7809
Anguiano, Nadia
angui010@umn.edu
Rozenshtein, Alan
azr@umn.edu

This applicant has certified that all data entered in this profile and any application documents are true and correct.

E. Isabel Park

511 S 4th St, Apt 312 · Minneapolis, MN 55415 | (408) 209-2575 | park2714@umn.edu

June 16, 2023

The Honorable Denny Chin
U.S. Court of Appeals for the Second Circuit
Thurgood Marshall U.S. Courthouse
40 Foley Square
New York, NY 10007

Dear Judge Chin:

I am a rising third-year student at the University of Minnesota Law School, and I would like to apply for a one-year position in your chambers for the 2024-2025 term. I am currently a Summer Associate at Latham & Watkins.

With this letter, you will find my résumé, law school transcript, and writing sample. Letters of recommendation from University of Minnesota Law School Professor Elizabeth Bentley, Professor Alan Rozenshtein, and Professor Nadia Anguiano are also attached. Please let me know if I can supply anything else for your review. Thank you for your consideration.

Sincerely,

E. Isabel Park

E. Isabel Park

511 S 4th St, Apt 312 · Minneapolis, MN 55415 | (408) 209-2575 | park2714@umn.edu

EDUCATION

University of Minnesota Law School, Minneapolis, MN
J.D. Anticipated May 2024, GPA 3.765/4.333 (rank: 35/236)
Minnesota Law Review, Senior Articles Editor
Activities: McGee National Civil Rights Moot Court Competition (invitation only); Asylum Law Project, 1L Project Coordinator; Mid-Minnesota Legal Aid (Eviction Defense Project)
Other: Sidley 1L Summer Diversity Mentorship Program; MSBA Appellate Practice Section Mentorship Program

University of Michigan, Ann Arbor, MI
B.A., Honors Sociology, April 2018
Activities: Meteorite, Staff Editor (2017−18); Research Assistant to Professors Michael Barr and Margo Schlanger

EXPERIENCE

Latham & Watkins, Menlo Park, CA
Summer Associate, May 2023 – Present
Research and analyze federal and state securities law and draft research memos. Attend practice area trainings and meetings with attorneys to discuss case strategy.

Civil Rights Appellate Clinic, Minneapolis, MN
Certified Student Attorney/Student Director, December 2022 – Present
Conduct client interviews and legal research. Draft and cite-check briefs in state and federal appellate courts. Attend seminar sessions and moot arguments with appellate/Supreme Court practitioners. Help with clinic case selection. Prepare and manage case assignments and assist with clinic course curriculum development and refinement. Drafted client narratives for amicus brief in *Arizona v. Navajo Nation* (No. 21-1484). Attended oral arguments at the U.S. Supreme Court.

U.S. Attorney's Office (Civil Rights Enforcement Division), District of Minnesota, Minneapolis, MN
Legal Intern, August 2022 – December 2022
Drafted interview outlines, legal memoranda, and pleadings, including an ADA claim complaint. Revised and cite-checked work product. Observed and participated in client and community member interviews.

U.S. District Court for the Central District of California, Los Angeles, CA
Judicial Extern to Judge Karen Stevenson, May 2022 – July 2022
Conducted legal research and drafted bench memos. Prepared reports and recommendations in federal habeas cases involving *pro se* litigants and various minute orders. Observed trials and proceedings in judges' courtrooms.

Professor Alan Rozenshtein, University of Minnesota Law School, Minneapolis, MN
Research Assistant, January 2022 – Present
Conduct literature reviews on relevant legal, philosophical, and policy literature and the Fediverse, including its First Amendment and antitrust implications. Cite-check and edit draft papers.

Sidley Austin LLP, Chicago, IL
Project Assistant (Immigration and IP Litigation), June 2018 – June 2021
Drafted reference letters, USCIS and DOL forms, and compiled evidence for visa petitions. Facilitated green card process for 400+ immigrants. Prepared recruitment reports for government-issued PERM audits. Managed naturalization cases. Cite-checked and organized pleadings and exhibits for depositions and filings. Provided trial support by preparing witness examination outlines and binders. Filed pleadings through the U.S. Patent and Trademark Office's online filing system.

COMMUNITY SERVICE

Legal Services Corporation, *Assistant to Chairman of the Board of Directors (John Levi*)
Blind Services Association, *Creative Writing Instructor/Volunteer Reader*

INTERESTS

Language learning (Latin and French), classical piano, tennis, DJing, and singing (worship team, previously served in choir).

University of Minnesota Unofficial Transcript

Name : Park,Eun Young
Student ID : 5753023
Birthdate : 5 - 17

Print Date: 06/09/2023

MOST RECENT PROGRAMS

Campus : University of Minnesota, Twin Cities
Program : Law School
Plan : Law J D
Degree Sought : Juris Doctor

* * * * * **Beginning of Law Record** * * * * *

Fall Semester 2021
University of Minnesota, Twin Cities
Law School
Law J D

Course		Description	Attempted	Earned	Grade	Points
LAW	6001	Contracts	4.00	4.00	B+	13.332
LAW	6002	Legal Research & Writing	2.00	2.00	P	0.000
LAW	6005	Torts	4.00	4.00	B	12.000
LAW	6006	Civil Procedure	4.00	4.00	A	16.000
LAW	6007	Constitutional Law	3.00	3.00	A-	11.001
TERM GPA :	3.489	TERM TOTALS :	17.00	17.00	15.00	52.333

Spring Semester 2022
University of Minnesota, Twin Cities
Law School
Law J D

Course		Description	Attempted	Earned	Grade	Points
LAW	6002	Legal Research & Writing	2.00	2.00	P	0.000
LAW	6004	Property	4.00	4.00	A	16.000
LAW	6009	Criminal Law	3.00	3.00	A-	11.001
LAW	6013	Law in Practice: 1L	3.00	3.00	P	0.000
LAW	6018	Legislation and Regulation: 1L	3.00	3.00	A	12.000
TERM GPA :	3.900	TERM TOTALS :	15.00	15.00	10.00	39.001

Fall Semester 2022
University of Minnesota, Twin Cities
Law School
Law J D

Course		Description	Attempted	Earned	Grade	Points
LAW	6152	Federal Jurisdiction	3.00	3.00	A-	11.001
LAW	6219	Evidence	3.00	3.00	A-	11.001
LAW	6918	Rule of Law	2.00	2.00	A	8.000
LAW	7003	Legal Research & Writing Instr	2.00	2.00	H	0.000
LAW	7102	Law Review: Research & Writing	1.00	1.00	P	0.000
LAW	7623	Public Interest Field Placemnt	3.00	3.00	H	0.000
TERM GPA :	3.750	TERM TOTALS :	14.00	14.00	8.00	30.002

Spring Semester 2023
University of Minnesota, Twin Cities
Law School
Law J D

Course		Description	Attempted	Earned	Grade	Points
LAW	6661	PR - General	3.00	3.00	A-	11.001
LAW	6834	Federal Habeas Corpus	2.00	2.00	A	8.000
LAW	6839	Supreme Court	2.00	2.00	A	8.000
LAW	7003	Legal Research & Writing Instr	2.00	2.00	H	0.000
LAW	7102	Law Review: Research & Writing	1.00	1.00	P	0.000
LAW	7678	CL: Civil Rights Appellate	4.00	4.00	A+	17.332
TERM GPA :	4.030	TERM TOTALS :	14.00	14.00	11.00	44.333

Fall Semester 2023
University of Minnesota, Twin Cities
Law School
Law J D

Course		Description	Attempted	Earned	Grade	Points
LAW	6081	Constitutional Law: 14th Amend	3.00	0.00		0.000
LAW	6085	Criminal Procedure: Investigtn	3.00	0.00		0.000
LAW	6915	Race and the Law	2.00	0.00		0.000
LAW	7005	Senior Legal Rsch & Wrtng Inst	2.00	0.00		0.000
LAW	7097	McGee Civ Rts Mt Ct Comp Team	1.00	0.00		0.000
LAW	7100	Law Review Editors	2.00	0.00		0.000
LAW	7679	CL: Civil Rights Applit Dir	2.00	0.00		0.000
TERM GPA :	0.000	TERM TOTALS :	15.00	0.00	0.00	0.000

Law Career Totals

CUM GPA:	3.765	UM TOTALS:	75.00	60.00	44.00	165.669
		UM + TRANSFER TOTALS:		60.00		

***** End of Transcript *****

UNIVERSITY OF MINNESOTA

Twin Cities Campus

The Law School
Walter F. Mondale Hall

229–19th Avenue South
Minneapolis, MN 55455
www.law.umn.edu

June 9, 2023

Re: Clerkship Application of Isabel Park

Dear Judge:

I write with the highest regards for Isabel Park in support of her application for a clerkship in your chambers. Isabel was a star student in my Civil Rights Appellate Clinic in Spring 2023, where I supervised her work on a U.S. Supreme Court amicus brief in the case *Navajo Nation v. Arizona* and a Minnesota Court of Appeals case involving tricky subject matter jurisdiction issues. Isabel received the top grade in the clinic and frequently exceeded my expectations in the quality of her writing, editing skills, and legal analysis. But beyond those core skills that are key to success in a clerkship, she also has the soft skills that make her an exceptional teammate. She is kind and humble and has a genuine curiosity for the law that makes it a joy to work with her. I am confident she will thrive in chambers.

I designed the Civil Rights Appellate Clinic to train students on many of the same skills that I learned are critical to effective advocacy while clerking at all three levels of the federal judiciary. Before the semester started, Isabel started reading into the *Navajo Nation* case so that she was up to speed on the legal issues before diving into her assignment on the amicus brief. Having never encountered Federal Indian Law in law school or work, she quickly wrapped her head around the complex jurisdictional and substantive issues in the case and hit the ground running. To start, Isabel interviewed our client and then drafted narratives that brought the experiences of water insecurity on the Nation to life. She was also instrumental in editing and refining the whole brief so that it was of the highest quality and helpful to the Court. As affirmation of Isabel's hard work, the Navajo Nation's attorney referenced the brief during oral argument in a colloquy with Justice Alito.

In her other clinic assignment, Isabel confronted unsettled jurisdictional questions under Minnesota law, synthesized the relevant case law, and then drafted a well-reasoned and persuasive draft setting forth our argument. Her draft required minimal editing and, after double-checking her work, I learned I could trust her use of the relevant case law.

Across the board, Isabel exhibited that she is a skilled writer and editor. She is exceptionally detail-oriented, and at times improved my own writing during the final stages of preparing a brief for filing. She was dedicated to the clinic's work (often taking on extra research and proofreads to make sure the final product was top-notch) and dedicated to her own development (both through seeking feedback and learning organically from my edits to her work).

Isabel's performance in the clinic reflects that she has hit her stride in law school, where she is thriving. She received all A-level grades over the last three semesters, including receiving an A in Eighth Circuit Judge David Stras's Supreme Court seminar this past semester. She is a Senior Articles Editor of the Minnesota Law Review, was invited to participate in the McGee National Civil Rights Moot Court Competition team next year, and (to my delight) will serve as a Student Director in my clinic this summer and next year. To each of these activities, she brings a gentle confidence and unflappable work ethic that makes her a calming and reliable teammate.

Beyond her success in law school, Isabel is also an accomplished and former pre-professional pianist. She has an intellectual curiosity that was ignited during undergraduate coursework in 17th and 18th Century philosophy. And she maintains a deep connection to her Korean heritage.

I have full confidence that Isabel will make an exceptional law clerk. I hope you will consider her for the position, and please reach out with any questions.

Sincerely,

Elizabeth Bentley

Elizabeth Bentley
Visiting Assistant Professor of Law
Director, Civil Rights Appellate Clinic
University of Minnesota Law School

June 19, 2023

The Honorable Denny Chin
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Dear Judge Chin:

I write to give my most enthusiastic recommendation to Isabel Park for a clerkship in your chambers.

I am an associate professor of clinical law at the James H. Binger Center for New Americans at the University of Minnesota Law School, where I direct and teach the Federal Immigration Litigation Clinic. By way of background, my clinic engages law students in complex, high-impact litigation at every level of the federal court system. The larger Binger Center is home to three additional clinics that represent persons detained by U.S. Immigration and Customs Enforcement, asylum seekers, and noncitizens in rural areas of Minnesota. I also teach a non-clinical course on post-conviction remedies and relief. Before joining the faculty at Minnesota Law, I served as a judicial law clerk in federal district and appellate courts.

Both semesters of the past academic year, I served as Isabel's *Minnesota Law Review* faculty advisor. I worked closely with her as she researched and wrote a Note focused on the North Korean Human Rights Act of 2004. Throughout our time working together, Isabel demonstrated keen intellect, outstanding legal research and writing abilities, and superb organizational and interpersonal skills. In short, she has many of the necessary attributes to being a successful judicial law clerk, and I have no doubt she would excel in that role.

Although writing a Note differs from the tasks most law clerks complete in chambers, there are many similarities that enable me to gauge Isabel's capabilities for serving the judiciary (based on my own experiences as a former federal law clerk). For example, Isabel's Note required her to delve into multiple complex areas of law at once. Some of these areas were completely unfamiliar to her. Isabel rose to the challenge. She quickly learned about complicated nuances of domestic asylum law and how those intertwined with principles of separation of powers and foreign policy, among other topics. Isabel researched efficiently and quickly synthesized and distilled complicated information from multiple sources. Similarly, Isabel's writing is excellent. It is sharp, focused, and also a joy to read. Unlike many other students I have advised for various law journals, Isabel's writing required little editing on my part, and she presented carefully proofread drafts to me every time.

Beyond her outstanding research and writing abilities, Isabel is also remarkably well-organized and self-motivated. She approached Note-writing methodically, setting steady goals for herself throughout the year. She also continuously kept *me* organized and on task. As just one small example, when I agreed to be her Note advisor, I asked Isabel to put deadlines in my calendar directly and block off time for me to review her Note drafts before those deadlines. She continuously did that, without my prompting or reminding her. Because of my busy schedule managing a heavy litigation docket, Isabel's proactiveness with small organizational tasks saved me precious time.

Finally, I'll add that although Isabel was not in my litigation clinic, I am able to assess her performance based on the caliber of students I teach as a clinician. My clinic has a deserved reputation as a demanding academic undertaking, and for this reason the students who enroll tend to self-select from the higher tiers of their class. I therefore have the privilege of working closely with talented, self-motivated, and intellectually curious students daily. Within that context, Isabel has greatly impressed me in all aspects of her work with the *Minnesota Law Review*.

In closing, Isabel is a person of high intelligence, diligence, reliability, and resourcefulness. On top of all that, she is creative, kind, considerate, and a pleasure to have around. I believe Isabel would be an excellent law clerk if selected, so I recommend her enthusiastically and without reservation.

Please contact me anytime if you need more information. My email is angui010@umn.edu, my office phone number is (612) 301-8653, and my cell is (507) 261-2617.

Thank you for giving Isabel's application your closest consideration.

Respectfully yours,

Nadia Anguiano
Nadia Anguiano
Associate Professor of Clinical Law
Director, Federal Immigration Litigation Clinic
James H. Binger Center for New Americans
University of Minnesota Law School
229 19th Avenue South | Minneapolis, MN 55455
angui010@umn.edu | Phone: (612) 301-8653 | Fax: (612) 624-5771

June 19, 2023

The Honorable Denny Chin
Thurgood Marshall United States Courthouse
40 Centre Street, Room 2003
New York, NY 10007-1501

Dear Judge Chin:

I write to strongly recommend Isabel Park for a judicial clerkship. Isabel is immensely talented, hardworking, and a pleasure to be around, and I am certain she will become a leader in the legal profession. I have no doubt that she will make a terrific addition to your chambers.

I first met Isabel when she reached out to me at the beginning of her 1L year, asking if she could work as my research assistant. Impressed with her initiative, I asked her to help me with a paper I was working on about content moderation on decentralized social-media platforms.1 She has done an absolutely fabulous job. I have had many excellent research assistants over the years, and I can say with confidence that Isabel has been the best one by far. She works extremely quickly, carefully, and thoroughly. And she has the very rare ability to anticipate what my follow-up questions will be and to provide answers to them before it even occurs me to ask. I think immensely highly of Isabel's abilities, and she is at the very top of my list for all future research projects. In my experience as a law professor and former clerk, the closest experience to clerking is working as a research assistant. On that basis alone, I am 100% confident that Isabel will be a tremendous clerk.

Although I have not yet had the pleasure of having Isabel as a student in one of my classes, I can speak to her academic performance, which has been very good. While her first semester grades were admittedly a bit mixed, her second-semester performance is superb, with straight-A level grades. This trajectory demonstrates that Isabel has fully gotten into the groove of law school, and I anticipate continuing excellent academic performance. She was also recently selected to be a staffer on the Minnesota Law Review, which will further improve her research and writing skills.

Isabel is also the rare student who both excels in the law and has a rich set of outside interests. When she was high school, she planned to be a professional pianist, a career that was unfortunately derailed by an injury. Undeterred, she studied sociology at the University of Michigan, where she participated in the Putnam Competition, the most prestigious mathemat- ics competition for undergraduates in the United States and Canada—not a typical extracurricular activity for a sociology major!—and founded the University of Michigan Journal of Bioethics. Before law school, Isabel also considered attending divinity school at the University of Chicago, which offered her a full merit scholarship. Isabel is a woman of many talents and interests!

On a personal level, I can also strongly recommend Isabel, whom I've been fortunate to get to know outside the classroom. She's witty, pleasant, and kind, all critical attributes for a law clerk.

In sum, I very strongly recommend Isabel for a clerkship. Please feel free to contact me if you should have any questions about Isabel or if I can be of assistance in any way.

Yours sincerely,

Alan Z. Rozenshtein Associate Professor of Law azr@umn.edu

E. Isabel Park

511 S 4th St, Apt 312 · Minneapolis, MN 55415 | (408) 209-2575 | park2714@umn.edu

WRITING SAMPLE

This writing sample is a cert pool memo I prepared for Judge David Stras's Supreme Court seminar this semester. In the memo, I analyzed a climate change case that was petitioned for certiorari to the Court and ultimately recommended that the Court deny the petition. The word limit for the assignment was 2,000 words. I received an A+ on the assignment. It has not been edited by anyone else.

PRELIMINARY MEMORANDUM

January 20, 2023 Conference
Docket No. 22-361

BP p.l.c., et al.

Cert to CA4 (Floyd, Gregory, Thacker)

v.

Mayor and City Council of Baltimore

1. *Summary*: Petitioners are twenty-six multinational oil and gas companies that produced and sold fossil-fuel products, which they promoted through consumer deception. Respondent sued Petitioners in state court for a variety of claims, ranging from nuisance to negligent design defect, all arising under Maryland law. Petitioners removed the case to federal court, asserting eight grounds for federal court jurisdiction. This Court has seen this case before, when it ordered CA4 to review all of Petitioners' arguments for removal because it did in fact have appellate jurisdiction to do so. Petitioners now seek another review of CA4's subsequent order denying federal court jurisdiction on all eight grounds and affirming the remand of the case to state court, arguing that this case presents a pressing circuit split. I recommend **DENY** for various vehicular issues and because the circuit split is illusory.

2. *Facts and Decisions Below*: Facts: Based on Respondent's initial complaint, which was filed in state court, Petitioners extracted, produced, and sold fossil-fuel

products (i.e., coal, natural gas, and oil). *Mayor & City Council of Baltimore v. BP p.l.c.*, 31 F.4th 178, 195 (4th Cir. 2022). They also deceived consumers and the public by discrediting publicly available scientific evidence and creating "persistent doubt within the public sphere" about the harms of their practices, despite knowing "for nearly fifty years[] of a direct link between their products and climate-change threats." *Id.* (quotations omitted). Petitioners' actions caused rises in sea level and also more frequent and severe precipitation events, drought, heat waves, and extreme temperatures. *Id.* Respondent Baltimore alleged that it in turn suffered economic and social harms from the aforementioned climate-change-related impacts of Petitioners' conduct. *Id.* Seeking monetary and injunctive relief, Respondent brought eight state-law causes of action[1] against Petitioner. *Id.*

Petitioners timely removed the case to federal court, asserting eight statutory and other legal grounds for removal, including that federal common law governs Respondent Baltimore's claims. *Id.* at 196. Baltimore moved in response to remand its case back to state court. *Id.* The district court granted Respondent's motion; accompanying its decision was an order and opinion rejecting each of Petitioners' eight grounds for removal. *Id.* Petitioners appealed to CA4, which affirmed: it rejected Petitioners' argument that the federal courts had jurisdiction over their case under the federal officer removal statute and declined to address the remaining seven grounds for lack of appellate

[1] Eight seems to be the magic number in this case. The causes of action were: (1) public nuisance; (2) private nuisance; (3) strict liability for failure to warn; (4) strict liability for design defect; (5) negligent design defect; (6) negligent failure to warn; (7) trespass; and (8) violations of the Maryland Consumer Protection Act (MPCA).

jurisdiction. *Id.*

Petitioners then appealed to this Court, which remanded: without commenting on CA4's ruling on the single ground for removal, we clarified that § 1447(d) granted CA4 appellate jurisdiction over Petitioners' remaining arguments.[2] *Id.* at 196–97. Accordingly, we ordered CA4 to examine those arguments in the first instance, all of which CA4 subsequently rejected in a lengthy opinion. *Id.* at 195, 197.

Petitioners' first two argument are related. Petitioners classify Respondent's claims as "interstate-pollution claims" which, according to Petitioners, is governed by federal common law. Defs.' Suppl. Br. 3. They further allege that Respondent's claims implicate various federal issues, including national security and foreign affairs. *Baltimore*, 31 F.4th at 208. Applying the well-pleaded complaint rule, which limits courts to the four corners of a complaint when determining whether a lawsuit raises issues of federal law so as to create federal-question jurisdiction under § 1331, CA4 disagreed. *Id.* at 197. Plaintiffs (i.e., Respondent) had relied exclusively on state law in their complaint, and Petitioners "never [pointed] to the specific cause of action under federal common law." *Id.* at 198–99. Furthermore, CA4 found no "unique federal interests" or a "conflict" between the state and federal interests warranting the overriding application of federal law to Respondent's state-law claims. *Id.* at 201–03.

[2] Petitioners argued eight bases for removal to federal court: (1) federal common law; (2) substantial issues of federal law and foreign affairs under *Grable*; (3) complete preemption under the Clean Air Act; (4) federal enclaves; (5) the Outer Continental Shelf Lands Act; (6) the bankruptcy removal statute, 28 U.S.C. § 1452(a); (7) the admiralty jurisdiction statute, 28 U.S.C. § 1333(1); and (8) the federal officer removal statute, 28 U.S.C. § 1442(a)(1).

CA4 then rejected Petitioners' argument that the Clean Air Act (CAA) completely preempted state law. *Id.* at 204. While acknowledging that the CAA has ordinary preemptive force, the Court pointed to the Act's two savings clauses, which vest "state and local governments with the primary responsibility of controlling and preventing air pollution" and preserve their legal right to impose stricter limitations on air pollution than the Act does. *Id.* at 216 (citations and quotations omitted).

Next, CA4 rejected Petitioners' federal-enclave argument. Under *Stokes*, an injury sustained *within* a federal enclave confers federal jurisdiction. *Id.* at 218. But the city of Baltimore includes non-federal lands, so not "*all* pertinent events"—i.e., the injuries that Respondent Baltimore allegedly suffered—occurred on a federal enclave. *Id.* at 218–19 (citations omitted).

The spirit of CA4's rejection of Petitioners' remaining four arguments for federal jurisdiction, in a word, is remoteness. First, the Outer Continental Shelf Lands Act grants district courts jurisdiction of cases "arising out of, or in connection with . . . any operation conducted on the outer Continental Shelf." *Id.* at 219 (citing 43 U.S.C. § 1349(b)(1)). Standard statutory interpretation led CA4 to inquire whether a but-for connection between Petitioners' conduct and the Outer Continental Shelf existed, which it answered in the negative. *Id.* at 220. Second, the bankruptcy removal statute confers federal-court jurisdiction if there is a "close nexus" between the current action and a bankruptcy case such that the former "could conceivably have any effect" on the latter. *Id.* at 222–23 (citations omitted). Such was not the case, and CA4 found that no exceptions to this rule applied. *Id.* at 223–24. Third, CA4 rejected Petitioners' claim for removal under the

admiralty-jurisdiction statute because even if Petitioners' fossil-fuel extraction occurred on vessels engaged in maritime commerce,[3] the "*actual* torts" occurred on land, not on navigable waters or by vessels. *Id.* at 225–27. Lastly, CA4 held that the federal-officer-removal statute did not apply because, notwithstanding the contractual relationships between Petitioners and the federal government, Petitioners were neither "acting under" the government's direction nor "[performing] a job that, in the absence of a contract with a private [entity], the Government itself would have had to perform." *Id.* at 228–30. An "intensely regulated private firm[]" cannot invoke federal-court jurisdiction under the federal officer removal statute. *Id.* at 230.

For the foregoing reasons, CA4 affirmed the district court's order remanding Petitioners' case to state court, and Petitioners requested this Court to grant certiorari.

3. *Contentions*: Petitioner: Federal common law does in fact govern Respondent's claims. Interstate pollution is a narrow area that is "inappropriate for state law to control" because it implicates uniquely federal interests. Petition for a Writ of Certiorari at 7. Not only was CA4's finding of no uniquely federal interests incorrect, but its imposition of another "strict condition"—that a "significant conflict" exist between that interest and the application of state law for federal common law to apply—was improper. *Id.* at 11. The alleged torts committed by Petitioners has global implications. *Id.*

Further, this issue of "whether federal common law necessarily and exclusively

[3] CA4 also disagreed with Petitioners respect to the meaning of "vessel." *Id.* at 226–27.

governs" claims related to interstate greenhouse-gas emissions is one that circuits disagree on. *Id.* at 12. Given the ever-growing importance and volume of climate change litigation, this Court should decide authoritatively on the issue. *Id.* And, because the Solicitor General has filed a brief in *Suncor*, expressing its views on the same issues presented here, the time to do that is now. *Id.*

Brief in Opposition: Respondent agrees that removal could be warranted if its claims were federal law claims "disguised" as ones arising under state law. Br. in Opposition at 18. But they were not. Even if they were, any federal common law governing such claims was displaced by the Clean Water and Clean Air Acts. *Id.*

CA4 was correct in refusing to create a new exception to the well-pleaded complaint rule, which would effectively loosen the standards for removing cases to federal courts and disturb the delicate balance of federalism. *See id.* at 24–25. In doing so, CA4 abided by this Court's precedent, distinguishing cases that only speciously applied to this case (which Petitioners used to raise an illusory circuit split) and reached correct rulings on each of Petitioners' grounds for removal. *Id.* at 10–11, 15–17. Even setting this aside, the clear, pure state-law nature of Respondent's claims make this case a poor vehicle for deciding the issues raised. *Id.* at 3–4.

4. *Discussion*: Respondent's claims are not merely framed in terms of state law to evade federal-court jurisdiction, but "only [require] the resolution of questions of state law." *Id.* at 209 (citations and quotations omitted). Beneath the "broader story" of Petitioners' production of fossil-fuel products and their contributions to greenhouse gas pollution, Respondent ultimately seeks to hold Petitioners liable under tort law for

"concealment and misrepresentation of the products' known dangers" and the resulting harms to Baltimore and its citizens. *Id.* at 233–34. And this is an area of law that has traditionally been placed within the ambit of the states.

Even the descriptor "interstate" with respect to the alleged torts and their resulting harms seems like a stretch, given that Respondent is Baltimore City, and not even Maryland State. *See Baltimore*, 31 F.4th at 218. A party "cannot establish removal jurisdiction by mere speculation and conjecture, with unreasonable assumptions." *Id.* at 222 (citations omitted). Petitioners have failed to establish concretely and specifically, either through the record or the law, that there is any federal element to this case, but expect CA4 and now this Court to agree with them that it does.

This Court decided, when it first saw this case on appeal, that the "wiser course" was for CA4 to examine all of Petitioners' arguments for removal in the first instance. *Id.* at 197. CA4 did so thoroughly and thoughtfully in its well-reasoned sixty-page opinion, taking care to consider and distinguish the cases that Petitioners cited and breaking down their representation that a circuit split existed on both issues presented. *See id*. In multiple instances, CA4 noted that it was following its sister circuits for lack of a compelling reason to depart from their decisions. *See, e.g., id.* at 214, 217, 220. Additionally, Respondent's point that the clear-cut state-law nature of its claims makes this case a poor one for resolving the issues presented is well taken.

As both parties have noted, this case is factually and procedurally similar to *Suncor*, which is currently pending before this Court. Petition for a Writ of Certiorari at 12; Br. in Opposition at 1. The only difference is that in *Suncor*, this Court invited the

views of the Solicitor General on behalf of the United States. The most sensible course of action seems to be to deny certiorari in this case, for all of the reasons stated above, and decide the issues in *Suncor*, if it seems appropriate to do so. CA4 dispels the notion that there is an urgent circuit split in need of resolution, and this Court may very well have a better opportunity to address the issues presented here in a future case.

I recommend **DENY**.

5. *Recommendation*: **DENY**.

There is a response. There are amicus briefs from Washington Legal Foundation and The National Association of Manufacturers. There is a reply brief.

February 20, 2023 Law Clerk Park